LEGAL AID CLINIC INSTRUCTION AT DUKE UNIVERSITY

by

John S. Bradway

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The cases given as illustrations in the text are hypothetical. All names are entirely fictitious, and any resemblance to any person living or dead is purely coincidental.

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PREFACE

THE Duke University Legal Aid Clinic opened its doors in the autumn of 1931 with the twin responsibilities of instructing law students and of rendering legal advice and assistance to those applicants for aid who were not able to pay a fee. After ten years of operation there is just cause for evaluating the progress of what began as an experiment both in public service and in legal education.

The present attempt at such an evaluation should be of interest to all who are concerned with efforts looking toward the improvement of the administration of justice. But in particular it should attract the attention of those who are teaching Legal Aid Clinic courses elsewhere, as a matter of comparison; those who, during this war period, may be considering possible trends in postwar legal education; bar examiners and prospective employers of young lawyers who are interested in devices which disclose characteristics and capabilities; and former students in the Duke Law School, who may recall their own struggles with an earlier version of the program. The current inquiry by the Committee on Legal Aid Clinics of the Association of American Law Schools into the matter of minimum standards for the conduct of Legal Aid Clinic work also suggests that the present material is timely.

The members of the staff of the Duke Legal Aid Clinic have adopted an almost nostalgic attitude toward this material. It reminds them of past mistakes and of moments of achievement. It is for them a realistic point of departure for planning their lines of advance and development for the next decade.

Because of the novel character of the work herein described, it is justifiable to comment briefly upon the source materials which were available to the staff of the Duke Legal Aid Clinic. In June, 1940, the National Association of Legal Aid Organizations issued the *Tentative Bibliography of Legal Aid Work*, which contains references to a substantial amount of material already published on the subject. An examination of these references reveals that many of them argue the importance of clinical training in law as in medicine, or describe the physical setup of specific law school clinics. But comparatively little attention has been given to teaching techniques, objectives, methods, and course content. The present volume therefore describes what is

taught at the Duke Legal Aid Clinic and why and how it is taught. It is the third in a series dealing with Legal Aid Clinics.

In 1938 the first pamphlet, published in the series was entitled, somewhat hopefully, *How to Organize a Legal Aid Clinic*. It contained a comparative description and analysis of the physical structure of the then-existing Legal Aid Clinics and was intended to give those who might desire to establish an agency of this sort certain basic information.

The second volume in the series bears the descriptive title *Instructions to Students*. The student who is taking the course in the Duke Law School needs some definite statement and description of the rules and regulations of the active law office of which he, of course, becomes a part; the exercises in which he is participating; various miscellaneous material which may be useful to him in his career at the bar and which can be given here in a time-saving and orderly manner. This pamphlet has been and probably will continue to be revised annually by the staff.

The present volume is directed not so much toward the dean of a law school or the law student, but to the instructor. Its contents are gathered from three major sources. The Annual Reports of the Duke Legal Aid Clinic give a chronological account of the yearly changes and improvements. The minutes of staff meetings indicate in detail many problems and attempted solutions. Constructive criticism by students, former students, and members of the profession generally, has been invited; and their response has been generous and helpful. On the public service side, the Duke Legal Aid Clinic has had the benefit of: the standards established by the National Association of Legal Aid Organizations; daily contact with state and local welfare agencies; and, in 1941, a critical investigation which was a part of a community survey of charitable and welfare agencies under the auspices of the Durham Community Chest.

For convenience in presentation, this volume has been divided into six chapters. Chapter I, by a comparison of the objectives which were tentatively adopted in 1931 with those which are now regarded as important a decade later, is designed to suggest the nature of the general progress made. Chapter II describes in some detail the specific objectives sought in the first semester and the methods employed to attain them. Chapter III performs a similar service for the exercises given in the second semester. Chapter IV discusses the procedures used in training the students to write briefs and memoranda

of law and in preparing cases for trial. Chapter V refers briefly to certain administrative and evaluational techniques, including the grading system. Chapter VI summarizes the work and looks forward to new lines of development which, as yet, are only in the experimental stage. Most of the material, now no longer to be regarded as experimental, is here because in the opinion of the members of the staff and the students it has justified itself as a part of the course.

This material was ready for publication in 1942. For obvious reasons it has been reserved. In the interim many new ideas have arisen, and some of them are in effect. It seemed desirable to publish the volume in its 1942 form as representing the developments at the end of the first period of operation. The war brought a new set of problems which deserve a separate description.

The writer is merely a reporter. The ideas came from members of the staff, from students, and from other interested persons. While recognition is due to all of these contributors, it would be impracticable to name each one. The reporter desires particularly to acknowledge his indebtedness to the members of the Duke Legal Aid Clinic staff during the ten-year period. Present members of the staff are Edwin C. Bryson, Esq.; Alton J. Knight, Esq.; Charles H. Miller, Esq.; Allston Stubbs, Esq.; Mrs. Lina W. Williamson; and Miss Edith Bennett. Former members of the staff include Hon. Marshall T. Spears; Hon. A. H. Borland; Gordon Dean, Esq.; DeWitt Wright, Esq.; William T. Towe, Esq.; and Miss Eula Williamson. Gratitude is also due to Dean H. Claude Horack for patience, wisdom, and encouragement.

J. S. B.

Duke University
August, 1944

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LEGAL AID CLINIC INSTRUCTION AT DUKE UNIVERSITY

CHAPTER I

THE INITIAL PROBLEMS

WHEN the members of the staff of the Duke Legal Aid Clinic assembled for their first meeting in the early autumn of 1931, they were confronted with a number of urgent problems, which may be divided into various categories. First, there were matters of public relations. Legal aid work, the humanitarian plank in the public relations program of the organized bar, was not then well understood in the southeastern part of the United States. How could we proceed so as to win the sympathy and interest of the legal profession? The city of Durham was, perhaps, the first of its size in which an organized legal aid service had been attempted. Would enough cases and clients come into the office to give us the necessary "flesh-and-blood material"? Any law school curriculum is crowded with substantive and procedural law courses. How could we adjust our work so as not to absorb more of the student's time and attention than we were entitled to require?

Other problems related to internal organization. Obviously, if the clients did not receive as good service from us as from the best law offices in our vicinity, they had a right to complain. Even if they did not complain, they might lose confidence in us. For a service agency rendering legal advice and assistance to the general public, the maintenance of standards of quality of work would be of great importance. We staff members were going to work together. We needed a smoothly operating, frictionless office routine. If we did not conduct a first-class law office, how could we explain this inadequacy to our students who had a right to expect the best?

Finally, we recognized that in addition to public relations and client serving it was necessary to set up a teaching program which would justify by its results, on a basis comparable to other law school courses, the time and effort spent by the students under our tutelage. These considerations made it necessary for us to determine whether the cases and clients which came to us were good teaching "material" and what our objectives and methods would be.

This is not the place to discuss the process by which we endeavored to solve all these and similar questions. Our continued existence seems to us proof that some headway in each of these directions has

been made. But before we embark upon the main theme of the present book; namely, our quest for a solution to the problems of adequate objectives and methods of teaching the course, it is in order to say a word about the matter of "flesh-and-blood material."

The following quotation from the Annual Report of the Duke Legal Aid Clinic for the academic year 1940-41 indicates the number of applications for aid made to us:

The progress of the Duke Legal Aid Clinic during the academic year 1940-41 and during the first ten years of its existence is indicated statistically in the following chart, which shows the number of legal matters coming to the office. The 3000th application was made to us during this year.

Year	Number of Applications	Year	Number of Applications
1931-32	193	1937-38	311
1932-33	301	1938-39	402
1933-34	338	1939-40	421
1934-35	325	1940-41	399
1935-36	298		
1936-37	393	Total	3,381

The geographical distribution of the sources of these matters is as follows:

Year	Number of Applications from Durham	Number of Applications from outside Durham, but in N. C.	Number of Applications from outside N. C., but in U. S.	Number of Applications from Foreign Countries
1931-32	156	46	36	5
1932-33	211	61	31	1
1933-34	225	92	43	5
1934-35	227	39	32	2
1935-36	221	53	32	2
1936-37	249	76	78	4
1937-38	175	60	27	3
1938-39	262	98	40	2
1939-40	300	82	38	1
1940-41	303	65	31	0

Similarly the question of variety was found in practice to present no real difficulties. Whatever lack appeared in the real cases was compensated for in other parts of the work, as will hereinafter more particularly appear.

It is to be hoped that the reader who sees the phrase "flesh-and-blood material" as applied to the cases and clients handled by the

Legal Aid Clinic will not assume that the distressing difficulties of the persons who come to us for aid are regarded merely as impersonal statistical units. It would seem to us highly unprofessional to adopt for ourselves, or to allow our students to observe in us, any such attitude. The phrase is useful only in a special sense as we compare our work with the "material" used in other law school courses as it appears in casebooks, law review articles, and similar forms. In our opinion the "flesh-and-blood material," both in quantity and in variety, has been enough to enable us properly to teach the course.

In the present chapter there will be a discussion of the extent to which we have improved our understanding of the objectives. They have changed and may be expected to continue to change as the nature of the work and the varied needs of the student are more clearly understood. In succeeding chapters, the subject of methods will receive consideration. The reader should keep in mind that, in them also, the trial-and-error approach has been and still is being used. When the continuing stream of new ideas ceases to have a stimulating effect on the staff, the work will probably have crystallized to the point where it will be declining in usefulness.

PRELIMINARY PROBLEMS

In order to describe adequately the original, even though tentative, objectives of the course, it seems desirable to set forth certain preliminary decisions that we felt impelled to make. Little space is devoted to the reasons which led to these conclusions or the length of time required by us to reach them.

It was decided, first, that in a general way the Clinic course was an effort to bridge the gap between the thinking of the law student and the thinking of the young or middle-aged lawyer who, after some years of observation, struggle, and self-education, is generally regarded as a dependable practitioner in his community. It was recognized that work of this kind was not new in legal education, but that an earlier generation of lawyers had expected to acquire similar professional maturity in serving a law office apprenticeship.

There were indications that the apprenticeship system of legal education, with all its good and bad points, was obsolescent and that its passing would leave a serious gap. It was decided to explore that gap and to determine whether, by basing the initiative for such training upon the law school rather than the law office, it might not be possible to work out a teaching process, quicker, more effective, and more comprehensive than that of which tradition speaks and of which

we now see the declining vestiges. Advantages would be that all law students who wanted it (not merely those fortunate enough to get into a good law office) could now receive the training. The methods and results could be standardized and checked with respect to a class of students more adequately than if a single law office were attempting to evaluate the progress of only one or two individual young lawyers.

A second decision directed the work not into the channels of another law school course in substantive or procedural law, but toward a new approach to the whole subject of how a lawyer thinks. Instead of observing clients, facts, the case, the law, and the surrounding circumstances from the standpoint of the judge who in the appellate courts writes the opinion or of the legal scholar who in the classroom evaluates that opinion, we started out to consider the thinking which accompanies a case at law from the standpoint of the practicing lawyer.

The lawyer is sitting in his office. The door opens. A client enters and solicits aid in connection with a new problem which may have legal and possibly nonlegal aspects. The impact of the client and his story upon the mind of the lawyer inaugurates a chain of thinking and planning and later acting. One of the characteristics of the better lawyers seemed to us to be an orderly rather than an opportunist approach to that thinking, planning, and acting. We believed it might be possible to formulate a framework for such orderly thinking and to teach it to the law students. A student thus taught to deal with the professional task of client serving should have greater maturity of viewpoint and self-confidence. His time would be saved. He need not be left to his own resources to pick up such training here and there through the years. If we could decide how a good lawyer would think in the presence of typical circumstances, and if, further, we could devise a procedure to expose the student to situations which would require him to make necessary decisions and think along standard lines, we should have established in his mind a habit which would stand him in good stead. The course was not a means of passing a bar examination or of securing some lucrative position in his first years of practice, but rather a foundation upon which, with due diligence, he might in the future raise himself to the stature of the leaders of the profession in his community. We adapted a phrase for it from the late Justice Holmes, saying that we hoped to be able to teach law students how to practice law in the "grand

manner." But the essence of our idea was that we should try to help them to think as do first-class practicing lawyers.

As a realistic approach, we began by compiling some of our own experiences as young lawyers. We asked ourselves what it was that we had found difficult to do when we were fresh from law school. We agreed that our training had contributed, to our memory, certain legal concepts. It had helped us to acquire an analytical approach to a given set of facts for the purpose of finding the applicable rule of law. We had to admit, however, that the courthouse and the law office were arenas of a far different nature than the classroom.

It is one thing in the class or seminar room, or in the law library, to adopt a cool, impersonal, critical, and scholarly attitude as an observer of some controversy which has been handled by competent attorneys and a succession of courts and to determine what is the law or what mistakes were committed. In such a situation the student's minimum responsibility is to earn a passing grade in the course.

It is something else to be a harried participant in a real uncompleted case; to have to do "leg work" amid unfamiliar and sometimes hostile surroundings; to interview a first client; to realize that "facts" in a hypothetical case are given as the point of departure, while the "facts" in a real case may be secured only as the result of an expenditure of energy, imagination, and a thinking process not unlike that in which the detective of fiction indulges; to feel the sobering shock of ultimate responsibility in the making of decisions which should be, as nearly as possible, 100 per cent correct or the life, liberty, and property of our clients might suffer; to realize that cases are won in the law office by careful planning and ceaseless labor more often than by inspiration in the courtroom.

We recalled our humiliations, mistakes, inadequacies. We were inclined to feel that, too often, we had learned how to practice law at the expense of our clients. We admitted that our clients seemed, as a matter of course, to expect of us many things we had not learned how to do.

From these rather painful introspections we hoped to build a system which would give the student: (1) certain basic knowledge, so that he would feel somewhat at home in the practice as well as the study of the law and in using the tools which lawers use; (2) certain experience with as many thinking processes of the practicing lawyer as we could crowd into the course; (3) a certain professional point of view, which, among other things, should stress the importance to

the practicing lawyer of a habit of orderly approach to any problem expected or unexpected. We believed disciplines could be devised which would accomplish what we had in mind.

To indicate something of the administrative problems in the way, several examples may be given. We decided that the client needed some protection from the student, particularly in the early part of the course, but that later on, it would be educationally desirable gradually to relax the severity of staff supervision and allow the members of the class reasonable latitude for gaining confidence in their ability to make their own decisions. It was found helpful to take plenty of time discussing each case with the student, to make sure that he understood what was being done and why it was being done; but at the same time the client was entitled to standard service of a quality comparable to that obtainable in the better, local law offices. Therefore, the routine work of the Clinic office had to be kept moving smoothly, regularly, and expeditiously. If the student was vacationing, sick, or otherwise occupied, it might be necessary to take the matter out of his hands temporarily or permanently, so that the office should not be chargeable with default or neglect.

In order to avoid antagonizing the local lawyers, it was proper for us to limit our jurisdiction carefully to cases and clients where no fee could be paid. Considerable time was devoted to devising routines for ascertaining whether or not the applicant was a bona fide legal aid client. The experience of other legal aid societies was useful.

It became clear in the very beginning that individual, in addition to class, instruction was necessary, both because each student in the class absorbed information and built good mental habits at a different rate of speed, and because it was not practicable for more than one student at a time to work on each case. For purposes of comparison and grading, a common denominator of experience was needed to make sure that all the students had at least a minimum acquaintance with certain essential topics. The classroom work supplied this common denominator.

Ever present in our deliberations over the clients and their problems was the question, "What shall I do for this applicant?" This might include the query, "What is the law on this subject?" But both before and after the law was found, other questions of fact, of policy, or procedure, and of ethics, were sometimes of very great importance. As a result, the program took on the aspect of a wisdom, rather than a knowledge, course. The approach which we were con-

sidering tended to cut across other training in the curriculum and to deal, on occasion, with fields of law about which the student had had no law school experience. The aspect of the law as a seamless web, rather than as something available from a series of conveniently labeled law school courses or casebooks, had to be kept in mind.

The methods of solving these problems and others like them are described in the annual pamphlet entitled *Instructions to Students*. They are referred to here so that the reader will have some understanding of the variety of complex situations out of which we were endeavoring to evolve a means of teaching the student to think as does a lawyer about those aspects of law practice which are not emphasized elsewhere in law school. He would need to know them if he is to serve adequately his client, the court, the profession, and the community.

THE POINT OF DEPARTURE

Revolving these problems in our minds, we decided as a point of departure to set down the various stages in the mental process of considering a formalized case at law as viewed through the eyes of the practicing lawyer to whom the client first appears. It is of historical, as well as of comparative, interest to record this original outline (now substantially modified) which at the time we called "Suggested Outline of a Legal Case in Action."

I. Before the client comes to the office
   - A. Making one's self available to clients
     1. Public relations activities of lawyers
     2. Methods of dealing with applications by clients
     3. Improvements in law office organization tending to increase the quality of legal service and thus amounting to activity in the public relations field
   - B. Methods of keeping contact with those persons who send business into the office
     1. Former clients
     2. Other interested persons
     3. Interested groups
   - C. Statistics and record-keeping as to the source from which the case comes to the office
     1. Reasons for keeping such records
     2. Extent of such records

II. The first interview
   - A. Establishing the client's confidence

B. Keeping the office machinery moving
C. Taking hold of the interview
D. The problem of a retainer

III. Ascertaining the facts
A. Sources of facts
1. The client
2. Other persons
3. Public records
4. Other sources
B. Methods of ascertaining facts
1. Personal interview
2. Correspondence
3. Telephone conversation
4. Inspection of records or place

IV. Classifying the case
A. The need to translate the client's lay story into the field of legal thought
B. The preliminary classification
1. Cases in which there is no remedy or no complete remedy at law, but in which there may be a remedy from other resources in the community—the social agencies, the medical profession, the clergy, the legislature
2. Classification of cases, where the law furnishes a remedy, at least in part, in the general field of law in which they fall
C. The final classification
1. Importance of refraining from making a final classification until all the facts are collected
2. Classification in the particular portions of the field of law in which the case belongs

V. Determining the goal
A. Necessity of considering whether the client's objective will be secured better through law or elsewhere
B. If the best goal is in the field of law, the necessity of determining which of the several legal goals is best
C. If the client desires a goal which the lawyer thinks is not ethical, the necessity for dealing with the problem
D. If there is a chance of securing a technical goal but no practical benefit, the need for dealing with the problem
E. If the client desires a goal and, on a question of business judgment alone, there is a difference of opinion on the part of the lawyer, the need for a solution

VI. Determining the means of reaching the goal
- A. Conciliation
- B. Arbitration
- C. Litigation
- D. Legislation

VII. Carrying out the plan of campaign
- A. The technique involved in dealing with people
- B. The technique of drawing legal documents
- C. The technique of preparing a case for conciliation, arbitration, litigation, or legislation procedure
- D. Necessity for flexibility in point of view to admit modifying the original plan of campaign
- E. Technique of withdrawing from an unfinished case

VIII. Closing the case
- A. Technique of determining that all has been done that can be done and developing a defense of the action taken, if it should be necessary at any time to make an explanation
- B. Technique of referring cases when some extralegal agency or some other lawyer is to handle them
- C. Technique of satisfying the client that all is done that can be done and that the lawyer's services are satisfactory
- D. Evaluating the services, whether from the standpoint of charging a fee or for securing credit points in the Clinic work
- E. Statistical work
  1. Reasons for statistical work in closing a case
  2. Extent and nature of the records to be kept

During the years this outline has undergone considerable modification. It is still clear that at certain stages of a case, no matter in what fields of law the human problem may be, a lawyer in practice should be prepared to do certain kinds of thinking, should ask himself certain essential and relevant questions, and should make certain fairly definite decisions. We attempted to select from among the various possible stages those which to us seemed of the greatest significance and to build our classroom instruction around them. We wanted the student not only to be prepared for the specific problems presented by the various stages as each appeared, but also to have some background of experience and perspective upon which he might develop resourcefulness in dealing with a case, the facts of which were definitely unknown to him in advance. It seemed to us that a lawyer should always be prepared for the unexpected.

The work of the Legal Aid Clinic, therefore, divides itself quite

readily under three headings: law office or field work, classroom or laboratory work, and miscellaneous work. In the office work, the student under supervision deals with real cases and real clients. He has a chance to see the case as a whole, whether that whole is brought to a conclusion by giving some comparatively incidental advice, by protracted litigation, legislative activity, or otherwise. It seems to us that a student who has become used to the concept of a case at law as a related whole would have made progress in orienting himself in law practice. One way of expressing the position which a practicing lawyer holds in modern society is to say that he accepts human problems, ascertains the facts, ascertains the law, plans what is to be done to obtain a solution particularly according to law, and then proceeds to carry out the plan. If the student in the course obtains practical experience in this routine, he may decide for himself whether it is the sort of work in which he may care to spend the best years of his life.

The classroom or laboratory portion of the instruction consists of what might be termed explanatory exercises in "slow motion." In the first semester it is a matter of indicating how a lawyer takes hold of a case. In the second semester emphasis is placed on certain methods of closing out a case or carrying out the client's problem to the best possible solution.

In the field of miscellaneous tasks are included certain special procedures which, while they might readily be classified under one of the other heads, nevertheless consume so much time and are of such importance to the lawyer that they deserve special consideration: for example, briefing work, the technique of charging fees, legislative drafting, the preparation of the facts of a case for trial.

The emphasis in the present volume is on the objectives and methods of classroom or laboratory and miscellaneous work. The only device in the office-work part of the course which deserves comment here is the practice of frequent individual conferences between the student and the supervising attorney. Through them the student has an opportunity to participate in the making of the several decisions which are involved. The method and technique of handling the other exercises are more difficult to describe and deserve the space devoted to them hereinafter.

THE OBJECTIVES OF THE CLASSROOM AND MISCELLANEOUS WORK

The progress in crystallizing objectives is readily indicated by a comparison of those set forth in 1931 and in 1941. The following

statement is taken from a pamphlet entitled *A Handbook of the Legal Aid Clinic,* prepared by the writer while a member of the faculty of the Law School at the University of Southern California, and was adopted by the staff of the Duke Legal Aid Clinic as the basis for the initial efforts during the first year, 1931-32:

The outline of the work is as follows: (1) The course is a practical course in practice instead of a theoretical course. It is designed to lift the student over the worst part of the period of orientation from the theory to the actual practice of law. It gives him a chance to experiment, to make mistakes under circumstances when to do so will not cost him his position. It brings him face to face with the machinery of the law. If he wishes to do so he may meet personally, judges, court officials, members of the bar and others with whom, in the future, he will be in frequent contact. He meets them on a basis which entitles him to unusual consideration because he is representing an organization which has no axe to grind, which is interested solely in improving the administration of justice.

(2) The course is a synthesis of other law school courses. Here, in a sense, a student may review law he has learned elsewhere in other courses. The course is not concerned primarily with teaching law, but inevitably the student learns certain points of law. Probably a man never forgets the rules of law which he deals with in his first few cases. They are impressed upon his memory by the surrounding circumstances.

But the arrangement of law dealt with in the clinic is not the nicely ordered system we find in casebooks and textbooks. The individual client usually gets himself into a difficulty so complex that to extricate him requires the application of rules of law learned in a dozen different law courses. The technique of synthesizing several rules of law with reference to a particular case is no mean achievement for a practicing lawyer.

(3) The course endeavors to give the student social vision. We are interested here in the client and his problems. We learn how to bring rules of law to bear upon him and his difficulties. We also learn something of his problems that are not solvable by law. Often we need to make contacts with the other professional groups in the community: the medical profession, the clergy, the social work group. Unless we do so, our client's problem may be solved so inadequately that the solution may be of little value to him. To serve our client best we must broaden our mental horizon.

(4) The course is a practical one in legal ethics. The clinic is in touch constantly with the courts, the bar, and the public. Innumerable practical problems of legal ethics arise, reaching from the actual request from a client that we disbar an attorney, to the daily matters of professional etiquette such as those surrounding substitution of attorneys or stipulations and agreeements of counsel.

(5) Finally, the course is designed to introduce the student to the strategy of the lawsuit. It conceives of a legal proceeding as a campaign in which, in addition to rules of law, the question, what to do next, is of supreme importance. One who plans out a campaign in advance often has a distinct advantage. He knows where he is going. The technique of planning such a campaign is a definite problem to be studied during a man's whole professional life. It is none too soon to start that study in law school. Much of the material on this point is contained in a case or problem book used in the classwork.

Paraphrasing this statement, one might say that the objectives were the following: (1) to give the student confidence in himself in law practice; (2) to teach him how to apply what he learns in law school to the solution, according to law, of actual human, as well as legal, problems; (3) to help the student realize that he should plan broadly in the interests of the client, the court, the profession, and the community; (4) to illustrate the importance of applied legal ethics; (5) to show the student how a case at law looks, not when it is completed and published in a casebook, but as it first enters the law office, and to give him a sense of the continuity of the process of bringing it to a conclusion.

The following statement of objectives taken from the 1941-42 book *Instructions to Students* indicates the extent to which the foregoing somewhat general ideas have been crystallized into specific goals:

(1) To provide the student, by participation in the conduct of actual cases in action and under supervision of members of the bar, with a series of pictures of the background of law practice, which from repetition have become a part of the subconscious equipment of the active practitioner. From these experiences the student has an opportunity to save time in acquiring that essential and effortless familiarity with the subject which his clients, the courts, his profession, and the public have a right to expect from him.

(2) To offer the student, first in the classroom and then in the handling of actual cases in action, elementary opportunities to develop in an orderly fashion and with expedition those essential legal skills, techniques and mental habits, creative rather than analytical, which are the mark of the successful practicing lawyer.

(3) To assist the student, by the handling of cases in which no fees are or can be paid, to develop the personal viewpoint that a good lawyer, in addition to being a gentleman and a scholar, is also a public servant.

(4) To aid the student in dealing with facts as an essential part of a legal proceeding.

(5) To familiarize the student with the art of dealing with clients as contrasted with law professors.

In general, the clinic work may be included under three main heads: (a) the handling of actual cases by the student under supervision; (b) certain classroom work designed to prepare the student for the handling of actual cases, discussed hereafter; (c) certain briefing work, discussed hereafter.

To these general objectives are added more specific goals for each semester and for each exercise.

The reader will note that the statements have progressed in precision of wording and in definiteness of concept. Again No. 1 is concerned with giving the student confidence in himself, but now it appears more clearly that his self-confidence is to be accomplished by his participation under supervision. No. 2 emphasizes the effort to train the student to think as does a lawyer. The case method is notable for improving analytical powers. Since other mental processes are used by lawyers, some attention is given to them with a view to producing a well-rounded practitioner. No. 3 seems to be much the same as No. 4 and No. 5 in the first set of objectives. But here a method is noted. No. 4 is a development not specifically contemplated in 1931. The students too often have treated facts as something definite, written down in the opinions of appellate courts, or stated by a law professor as a hypothetical case for discussion. Facts, as they appear to the practicing lawyer, are of a different sort, and the exposure of the student to them has come to be an important realistic part of the work. No. 5 is a more specific statement of a general idea which may be read between the lines of the statement in 1931.

OBJECTIONS TO BE MET

Some persons in endeavoring to appraise the value of the work of the Legal Aid Clinic in the early days feared that (1) too much time might be devoted to this work in a three-year curriculum; (2) the information given the student might be too elementary to warrant spending time on it; (3) the exercises might overlap other practice courses; (4) it might prove to be a course on the "tricks of the trade" and thus might tend to stimulate unethical conduct; (5) it was impracticable to bring a client into the classroom to discuss his problems, and, therefore, the work would tend to be impractical; (6) there might be trouble in maintaining a uniform rate of speed for the class; (7) we might overlap substantive courses. These objections necessarily had to be met in some fashion.

As to No. 1, it was possible to reason somewhat along the following lines. If only three years are available for legal education, during that brief period the law school should give the student all of the most important matters it can. The most important matters are those which he cannot readily learn elsewhere. If we assume the existence of an adequate and comprehensive law office apprenticeship system supplementing the law school work, much is to be said for emphasis during the three years on substantive law courses. But with the law school as the main dependable educational center another line of reasoning seemed to us more persuasive.

Legal education is a lifelong affair. There is no unanswerable reason why a three-year strait jacket should be applied to law school work. At present there are two critical stages. The end of the first is clearly marked by the granting of a law degree and the admission to the bar. The second is concluded when the young, or in some cases the middle-aged, lawyer is recognized by the public at large as being a dependable public servant. Some lawyers never pass this second stage. It is to prepare the law student to drive through this second period of struggle and, if possible, to shorten it, that we addressed ourselves. Our work seemed important enough as a time-saving device to warrant inclusion of at least some of it in the limited law school curriculum.

As to No. 2, familiarizing the classroom conditioned law student with places like the law office and the courthouse, where the practicing lawyer does much of his work, is an elementary task. If a great deal of time were devoted to it, there might be objection; but no great deal of time is devoted to it. Rather, the student working in the new atmosphere, at other more significant tasks, acquires, perhaps unconsciously, the ability to think and act at ease amid such surroundings. It is rather a by-product of the other exercises. But the disciplines designed to establish mental habits and to teach skills and techniques are of a more advanced character. The efforts to give the law student a point of view of a lawyer as a cultured gentleman, an able legal scholar, and an efficient and professionally minded public servant are also not in the elementary field.

As to No. 3, there was no occasion for overlapping or duplication of other practice work in the approach that we adopted. The two courses which came nearest to our field were: second-year Briefing and third-year Practice Court. The Briefing course taught the principles of the subject. It was simple, therefore, to make the corre-

sponding work in the Legal Aid Clinic an application of those principles in the writing of real briefs for lawyers in practice. Later, when the second-year course was discontinued, the Clinic responsibility was expanded to include the whole task. The Practice Court taught the procedures at the climax of the litigation process, pleading and trial work. It was a simple matter for us to confine ourselves to other phases of law practice in which members of the profession constantly engage and teach such topics as ways of interviewing a client, the conciliation process, law office routine. The solution was purely administrative. Even if the Clinic student comes across something that he has met elsewhere in law school, our approach to it is so different that no time is wasted in duplication.

As to No. 4, the solution again was an administrative matter. There were several questions we might have asked ourselves. If we had said to the student, "Here is a set of facts. What is the law?" we should have headed back at once toward the orthodox courses. If we had said, "Here is a problem. I am on one side and an able antagonist is on the other. How can I outwit my opponent?" the "tricks of the trade" might have been in the foreground of our thinking. Instead, we ask, "Here is a client with a difficulty. What can I, as an ethical, practicing attorney, do for him?" The answer necessarily requires consideration of the lawyer's obligation to court, profession, and community.

The term "tricks of the trade" is used in some circles as similar in significance to the activities of the shyster, or the lawyer-criminal. There appears to be only a limited benefit in attempting to keep the law student in ignorance of these activities. He is sure to find out about them when he gets into practice and perhaps in such a way as to ruin his idealism and make him think of his law school instructors as a group of impracticable old fogies in an ivory tower. While it is equally undesirable to emphasize the "tricks of the trade," an intermediate solution seems to be of some value. Whenever one of the "tricks of the trade" shows up, it can be recognized, examined, and explained. An effort can be made to show the student why these practices are not indulged in by the better lawyers. If no such reasons are available, it is high time that someone assumed responsibility for finding them.

The real objective of the course is not in the field of knowledge, but of wisdom. We seek to put the student in the place of a well-rounded, ethical practitioner of the law and to help him to think standard thoughts and to make standard decisions.

As to No. 5, the presence of an actual client in the classroom was found not to be necessary. Later, in the present volume, there will be found a discussion of several classroom exercises in which individuals impersonating clients were employed.

As to No. 6, the rate of speed in the class exercises is no more of a problem here than in other courses. In general, the effort has been to visualize as the goal, a well-rounded practitioner of law, rather than a person extremely capable in one direction and only moderately good in others. The result has been a growing tendency toward individualized instruction. Perhaps in clinical teaching of law this development is inevitable. The benefits to the students from an opportunity to test themselves against disciplines which they may not like and for which they may have a temporary or permanent incapacity, seem to the staff to justify the time spent in individual instruction.

No. 7. The emphasis in the framework of our plans upon the thinking of the lawyer at various stages of a formalized case helped us to avoid overlapping substantive law courses. If we had asked the student to give us the law with respect to a particular set of facts, it would have been natural either to select some field or fields of law not covered by other courses, or to treat the work of the Legal Aid Clinic as an advanced course in a field already surveyed. The unpredictable variety of Clinic material and the limited amount of student time available for work would make such a program impracticable. But the staff, with some desire to pioneer, posed the question previously noted: What are you going to do next for this client? This query focused more attention on the service to be rendered than on the legal label of the problem. The fact that a single client's problems might lead the attorney concurrently into a dozen different fields of law enabled the student to learn something of synthesis in his application of remedies. If material in other courses is encountered, it is merely incidental. If, for example, every case which came into the Clinic involved the collection of a wage claim, we could still find enough variety in the problems of rendering service to make the course worth while. The work of the Legal Aid Clinic supplements and does not overlap the work in other law school courses. Experience indicates that many, if not most, law students have a real struggle to get away from a law school concept of the client and his problems as cleverly classified—like courses, casebooks, or chapters of legal digests. It is a subconscious attitude which should be removed and replaced with the viewpoint of the practicing lawyer.

THE LAW SCHOOL CATALOGUE

Perhaps the most satisfactory means of concluding the present chapter is to compare the 1931 and 1941 statements regarding the Legal Aid Clinic course appearing in the *Law School Catalogue.*

In 1931 the following statement was made:

Commencing September, 1931, the Law School will conduct a Legal Aid Clinic. The clinic will be housed in the law building in quarters especially designed for such work as the clinic will carry on. The legal aid work will be a part of the regular curriculum of the third year and required of all third-year students.

In 1941 the statement was changed to read as follows:

The objectives of the course are: to give the student experience in actual cases; to develop creative skills, techniques and mental habits; to encourage a sense of responsibility to client, court, profession, and community. Students under supervision of staff attorneys and in co-operation with members of the Durham bar, court officials, and social and other professional agencies in the community, engage, so far as students may, in the handling of actual cases from the interview with the client until the final disposition of the problem by litigation or otherwise. In the first semester, class discussions are devoted to problems of law office organization, such as dictation of letters, keeping records of cases and organizing working time; problems involved in the use of public records; interviewing clients, and planning a campaign in a legal case. Individual study of selected problems, involving the use of digests, encyclopedias, case reporter series, legal periodicals, etc.; the marshaling of authorities and preparation of memoranda of law and opinions. Trial briefs are prepared for lawyers in active practice. In the second semester, the emphasis is on drafting legal documents, dealing with members of other professional groups as expert witnesses, working with two or more clients in conciliation proceedings. Appellate briefs are written for lawyers in active practice. Opportunity is afforded for special work in fields of particular interest. The course affords practical application of the principles of legal ethics and legal etiquette. Students are expected to demonstrate adaptability to office routine, dependability in action, maturity of legal judgment.

CHAPTER II

FIRST SEMESTER METHODS

THE specific objective of the Legal Aid Clinic exercises during the first semester is to help the student learn to think the way that a qualified lawyer thinks when he is taking hold of a case. To accomplish this purpose, it is important to have in mind some framework or outline which may approximate the actual steps taken in considering a real case. The student then can be allowed to study the outline for orientation purposes and can be confronted in the classroom or laboratory with a series of "slow motion" exercises. These may enable him to become familiar with the various problems under conditions where he or the instructor may stop the exercise for the purpose of asking questions, pointing out matters of significance, or even repeating the problem so that a second view may accomplish something impossible at the first, perhaps hasty, survey of the situation. Finally, the student, under supervision, handles real cases, thus gradually making the adjustment from classroom to law office. In the process he acquires certain information and has a chance to form certain mental habits and points of view, to gain certain experience, to become self-critical, and to acquire self-confidence.

The teaching process divides the general objective into three subordinate goals: (a) acquiring familiarity with the area in which a practicing lawyer functions—for example, the law office, the courthouse, the community; (b) establishing certain mental habits in budgeting time, employing appropriate form for the expression of ideas, learning the most effective methods for accomplishing certain results; (c) studying how to plan a campaign in a case at law. Each of these deserves brief comment.

The Area in Which a Practicing Lawyer Functions

To familiarize the student with the area in which a practicing lawyer functions, the following methods are used:

THE LAW OFFICE AS AN OBJECT OF STUDY

The first specific objective in the first semester is to help the student to think as does a lawyer in his office. To that end the following devices are employed:

A Law Partnership

The establishment of an informal law partnership between students and instructors is the first step. The Legal Aid Clinic is a law firm engaged actively, much like other law firms, in the handling of legal matters. The chief distinction lies in the fact that the Legal Aid Clinic sends out no bills and refuses cases where the client can pay a fee, or where the case is one out of which a fee seems reasonably possible. The student and the instructor, no longer on different sides of the classroom desk, are both engaged in this task of client serving; and a balance between public service and legal education must be preserved if a high standard is to be achieved in either direction. Since law students may not practice law, it is necessary that the ultimate responsibility for the handling of the cases and, therefore, for directing the students' activities, rests upon the members of the staff who are the "senior partners." At the same time the student is urged to feel that he is a "junior partner" and not merely a glorified office boy. Thus it is hoped to break down, in part at least, the traditional barrier between student and instructor.

Student Committees

To give the students practical opportunities to become acquainted with the details of law office operation and yet not to take up too much of their time, the class is divided into three committees: Office Organization, Public Relations, and Evaluation of Student Work. Roughly, they correspond to possible committees of a large law firm. The Committee on Office Organization directs its attention to the routine operation of the Clinic course, considers proposed changes in the work, and suggests to the staff ideas for improvement. During the years, a substantial number of proposals and decisions affecting favorably the operation of the work have emanated from this committee. The Public Relations Committee is concerned with meeting visitors, helping to secure persons to impersonate "clients" in classroom work, and other similar problems such as the name may indicate. To some extent, participation in this aspect of law practice reveals to the student his need as a lawyer to devote some of his time to public relations contacts. The Committee on Evaluation of Student Work is concerned primarily with studying the complicated and all too inadequately understood problems of a lawyer's fees. Since the Legal Aid Clinic charges no fees, the work of this committee is not too realistic. But a certain amount of time is spent studying the factors which are considered when a lawyer is deciding the proper

amount of a fee. Speakers are invited to discuss the subject with the class.

At the end of the year these committees make reports on their work. Care is taken not to give the committees too much work. On the other hand, some contact with the run-of-mine problems of a law office is desirable to give the student a sense of familiarity with the place where most lawyers spend a great deal of their time.

The Thursday Conferences

Emphasizing the importance of individual training as against dealing with a whole class as a unit, we have found it desirable to set aside one afternoon each week at which time the students in the class, in groups of not over four, confer with the instructor for periods of one-half hour, regarding any problems that may confront them in the Clinic and, in particular, concerning the classroom exercise given earlier in the week. As a means of exchanging points of view between students and instructor, these informal and intimate conferences can hardly be improved upon. They are valuable for the instructor because through them he can check the extent to which he is getting his ideas across. The shy student also benefits because he is encouraged to make observations and ask questions which he might hesitate to raise in the classroom. In addition to these Thursday afternoon meetings, there are constant personal conferences; but by setting aside a definite period for this work, the time of student and instructor is saved. Students who might be reluctant to attend on their own initiative, or who fear they might be accused of "apple polishing," are included.

The Office System

Student familiarity with the necessarily complex office system in the Clinic comes about gradually during the course of the year. The secretaries are in a particularly effective position to observe students as they make their adjustment to the procedure, for handling the volume and type of legal business, which we have adopted as best suited to our needs. The observations of the secretaries, therefore, have unusual value in determining how far a student has made an appropriate adjustment. All lawyers should become accustomed to some sort of routine for the efficient transaction of legal business, either as junior clerks or as heads of their own firms. Adaptability is regarded as a valuable characteristic. Cheerfulness under the inevitable drudgery of routine tasks is also desirable.

THE COMMUNITY

Since the lawyer functions in the community as well as in the law office, it is desirable that the Legal Aid Clinic course introduce the student to certain kinds of thinking which he will probably be called upon to do in this broader arena. Many points of contact might be studied to advantage. For our purposes, four have been selected: the courthouse, new machinery for the administration of justice, other professional groups, and individual laymen.

The Courthouse

This community institution holds interest for the law student for two major reasons. First, it is a place where by sitting in the courtroom and observing lawyers in action he may study trial technique and the niceties of courtroom demeanor. He may develop a critical faculty toward his own efforts in this direction. He may even find some lawyer whose manner of conducting himself appeals so strongly to the student as to warrant taking him as model. Second, the courthouse is a source of legal facts. It is with this aspect that the Legal Aid Clinic is primarily concerned.

The objects of the exercises in connection with the courthouse are to bring to the student some knowledge of the great variety of legal facts which are contained in the various public offices, and to help him learn how to secure them, when necessary in connection with actual cases. A simple method is employed. Early in the year, the class makes an evening visit to the courthouse. At this time of night the rooms are empty, so that the visit of the class does not create an inconvenience to those normally using the space. Also, the law student feels freer to ask questions and to take his time turning the pages of the books. Ordinarily, the trip is limited to an inspection of the material in the offices of the Clerk of Court and Register of Deeds. For greater convenience, the class is divided into small groups of three or four students. The staff member in charge of each group begins at a certain agreed point and works his way around the two offices. In this fashion, each student has a chance to get close to the books and papers. At the end of perhaps an hour and a half, each one has accumulated as much information as he can readily absorb at one time.

If the student is to have any confidence in himself in using such material, it is necessary that certain follow-up exercises be provided. When he is on duty at the downtown office of the Legal Aid Clinic and no client is present, the staff member often directs the student

across the street to the courthouse, telling him to look up certain information. Similarly, when the student is working on a real case, he is expected to know how to gather the material from the public records. After each of these excursions, an opportunity for discussion of the matter with the staff member clears up any additional difficulties. To provide a common denominator for grading the students, a mid-year examination, which is discussed in a later chapter, covers a further follow-up exercise in the courthouse.

If the student complains that he does not intend to practice law in Durham and that, therefore, this exercise is unnecessary, there are two general answers. Knowledge of the contents of one courthouse will help him to find his way around any other courthouse. In the course of his Legal Aid Clinic office work, he will save time if he knows where to go to look for information.

New Administrative Machinery

The staff of the Legal Aid Clinic is particularly interested in having the students become familiar with the nature and method of operation of some of the newer devices in the administrative field of law, such as probation, parole, the juvenile court. The objects of introducing the student to this type of agency are: helping to create in him an interest in legal reform; helping him to broaden his horizon so that he can think of the administration of justice in wider terms than the functioning of the orthodox trial and appellate courts; providing him with ideas which later on he may draw upon when opportunities present themselves for him in his home community to show his ability as a leader and as a social engineer.

The method employed thus far is limited to situations which may arise in connection with actual cases which the students are handling. Occasionally in the past, conferences have been arranged, for example, with a probation officer or with the Judge of the Juvenile Court; however, lack of time has prevented a systematic development of the attractive possibilities in this field.

Other Professional Groups

The exercises in the field of co-operation with other professional groups are among the most interesting in Legal Aid Clinic work. They are described in the next chapter under the topic "Interprofessional Conferences."

Individual Laymen

The objects of these exercises are primarily: to familiarize the student with the functioning of the lay or, at all events, the nonlegally

trained mind; and to encourage an understanding of the thinking process, which is necessary to build up a fundamentally sound relationship between the attorney and the various people with whom he necessarily will come in contact.

The method of exposing the student to the community is simple. With respect to such persons as court officials, jurymen, witnesses, the police, it is a natural development of field work and office cases handled by the Legal Aid Clinic student. The relationship between attorney and client, however, is of such significance that the balance of classroom time during the first semester is devoted to it.

The Client

The objectives of the office exercise in which the student and client are thrown together are to aid the student in his effort to learn how to deal with a flesh-and-blood client, and to provide a point of departure for the mental process involved in planning a campaign at law.

Insofar as the client as a human being is concerned, the mental process may be described in terms of the following tasks confronting the lawyer from the time the door of the law office opens and his first client enters until he is ready to begin dealing with the facts:

a. Establishing the client's confidence
b. Keeping the office machinery moving
c. Taking hold of the interview
d. Considering problems of a retainer or a fee
e. Surmounting any psychological blocs that may be present, such as anger, timidity, untruthfulness, grief, an intense bias for or against something, etc.

Most students during the course find occasions to evaluate themselves with reference to future law practice. Many of them are ill at ease as they deal with their first few cases and clients. The novelty of the experience sometimes calls forth great exertion. As this emotional reaction wears off, there is sometimes a slump in morale, particularly if the real cases, which the student is handling in his office work, turn out to be not as exciting as those which he has been studying in his casebook courses. Probably no service which the Legal Aid Clinic course renders to its students has more value than that of getting them past this first emotional surge, so that they are enabled, from the background of realistic experience, to take law practice, with all its victories and defeats, drudgery and thrilling moments, in their stride. Many a law student going through this

period of psychological adjustment asks himself whether or not he is fitted to practice law, and whether he will be happy spending his life in such labor. If he answers these questions in the affirmative, he is thereafter sure of himself. On the other hand, if he concludes that the law is not for him, perhaps the Legal Aid Clinic course has saved him several years of aimless floundering, wasted energy, and enthusiasm. A realistic approach to the matter seems to be the only practicable way of determining these personal problems.

EXERCISES IN THE FIELD OF TIME BUDGETING, FORM, AND THE DEVELOPMENT OF SOUND MENTAL HABITS

All too little opportunity is afforded in the Legal Aid Clinic work for exercises under the above heading. Those which, at present, are assigned a place in the course include: (1) legal letter writing, (2) briefing, (3) drafting legal documents, and (4) the preparation of facts for trial. Of these, legal letter writing and briefing occupy a place in the first semester; the others in the second.

In this, as well as in the other work, the classroom or laboratory exercises run along side by side with the handling of actual cases and clients, so that the student may see the process both in "slow motion" and at its normal speed. But the objective is not primarily the completed letter, or the brief or the document. Rather, we are interested in the mental process through which a good lawyer proceeds to reach a solution of the client's problem. We believe that there is an orderly approach and that, if the main steps can be identified and tagged, the student will benefit by knowledge of their existence and by familiarity with the use of this framework. We tend to express the mental process in a series of questions addressed to ourselves.

THE EXERCISES IN LEGAL LETTER WRITING

Experience has indicated that as early as possible in the course it is desirable to give the students some training in the technique of legal letter writing, although, logically, this particular mental process would come at a later point when we are studying how to carry out a plan of campaign at law.

Among the objectives of the classroom or laboratory exercises devoted to legal letter writing, the following deserve particular mention: to help the student acquire an orderly mental approach to the task; to help him budget his time, which will always be one of his most valuable assets; to help him protect himself against those mistakes which arise where the letter writer underestimates the complexity of

his task; to help the student appreciate the public relations value of using proper forms and practices in legal letter writing (those who see his letters will form some sort of opinion of the writer's ability); to save wear and tear upon the memory by conforming to a routine which fits the character and personality of the individual student.

The Mental Process

Much may be accomplished in this direction if the instructor can persuade the student to make a series of decisions. The following list is suggestive rather than inclusive:

(1) What do I want to accomplish at this stage of my client's case?

(2) Is a letter the best method of reaching my goal or should I use some other form of communication, such as a telephone conversation, a personal visit, or a telegram?

(3) If I am going to write a letter, what material might possibly be included in it?

(4) From all this possible material, what parts may I properly eliminate in order to make my communication clear, concise, and compelling?

(5) What arrangement of this residuum produces the most satisfactory development of the thought I wish to express?

(6) What obstacles to the achievement of my purpose may I anticipate, and how shall I endeavor to overcome them in my letter?

(7) If this letter should fall into the hands of someone unfriendly to me or to my client, what damage could it do?

(8) Will the letter convey the same meaning to the recipient as it does to me? Is it clear and concise?

(9) Is the form of the letter adequate; that is to say, the quality of the paper, the neatness of the typing, the spacing of the letter on the page, punctuation, spelling, etc.?

A series of exercises, requiring the student to raise and answer questions of this sort, is helpful in developing facility in letter writing. They should provide him with some ideas for instructing his secretary when he has one.

The Class Exercises

Three classroom hours are devoted to these exercises, although, as in the case of all other Legal Aid Clinic tasks, much more time could profitably be spent.

At the first hour the attention of the students is directed to problems dealing with letters opening a case. Such a classification of letters is certainly not the only possible one, but it seems practicable. This class hour is divided into two parts. During the first part the students are given one or more letters and asked to analyze them

for defects. The purpose of this device is to make the student sensitive to standards and to introduce him into a phase of the thinking of a good lawyer which underlies the production of any well-written legal document. The other half of the hour calls for more constructive thinking. Perhaps the simplest illustration for the first class meeting is a series of three demand letters in a case involving money collections. The instructor asks one of the students to assume that the instructor is a client and to interview him. In response to the student's questions, the instructor gives to the class a set of facts in which he, as a client, has a claim for money against some imaginary person. After the background of facts has been sufficiently developed, the instructor asks the student to dictate, in the presence of the class, the three demand letters which a practicing lawyer might write in a real case where the opposing party neglects or refuses to respond. A secretary in the classroom takes down the student's words as he dictates them, and they form a basis for further discussion, particularly at the Thursday afternoon session. After class discussion, the students are given an assignment to prepare and bring to the next Thursday afternoon conference three demand letters written as they think the letters should be written. At the Thursday afternoon conference, the instructor shows the students three similar letters which he has prepared and observes those which the students have written. Much benefit can be derived from this discussion. Sometimes the student needs to pay greater attention to such elementary items as spelling and grammar.

The second classroom hour in this exercise is devoted to a consideration of letters which carry the case forward. Here, again, the student is presented with some previously prepared letters and is required to analyze them for defects. During the second part of the hour, the instructor again impersonates a client and is interviewed by a student. The facts of this case frequently develop into a tort claim. The members of the class are required to prepare and submit on Thursday a series of letters, as if they were attorneys for the plaintiff, bringing the problem to the point where the opposing lawyer either must pay or be prepared to defend an action at law. This Thursday afternoon conference follows the routine already indicated.

The third session of the class on the matter of letter writing deals with letters which close out a case. Since the facts and situations are complicated, only a single case can be handled during the hour. For purposes of illustration, the following case which has been used in the classroom as a basis for discussion and the preparation of letters is presented.

J.S.B., 111 Briarcliff Road, Durham, N. C., has called at his lawyer's office to arrange for the purchase of a piece of land. Mr. B. was about to leave for a vacation in California, and he desires his lawyer to complete the transaction in his absence and write him that all is well. There have been tentative negotiations between Mr. B. and the owner, Mr. James Smith. Mr. Smith is married. A tentative price of $1,000 has been agreed upon. Mr. B. is willing to leave $2,000 with his lawyer to cover any possible expenses. The land to be purchased is 2621 Stuart Drive, Rockwood, Patterson Township, Durham County. It is a house and lot 60x150 ft. Mr. B. wants to put up a garage on the property. It is assumed that Mr. B. knows no more about the matter than this. He leaves the problem with his lawyer and departs on his vacation. The lawyer, in the meantime, is obligated to complete the transaction and write to Mr. B. that it is satisfactorily completed. This might involve a title search at the courthouse, the drafting of various documents, the clearing up of the title and its transfer. In order to save time at this stage of the course in discussions with the student, he is allowed to tell what he would do, but is not required to perform the tasks. The production of actual documents for student inspection lends realism.

If he says he would go to the seller with an option to purchase, he need not draw the option. If he indicates that he would go to the office of the Register of Deeds to look up the records, he is given the following additional information. Mr. James Smith owns the land in his own name, but he is married. He has placed three deeds of trust upon the property, and there is due on them $500, $300, and $150. The clerk will charge $5.00 to satisfy the record. There are no other encumbrances on record in this office. He will find that the deed to James Smith contained a mistake in description. Smith's grantor was Samuel Jones; but his wife Elizabeth did not sign. If the student should go to the tax office, he is told that $25 of last year's taxes are still due and unpaid.

If he inspects the premises, he will find the roof of the dwelling house in need of repair, but as Mr. B. wants to put up a garage, this may not be important. He also will find that the Durham Telephone Co. for the last fifteen years has maintained a wire over one corner of the property. Children have worn a path to school across one corner.

He might also inspect the city ordinances and building restrictions to see if a garage can be erected on the premises.

When the student comes to write the letter, he is concerned about a number of matters. He may, of course, write a letter saying simply that all is well. This reply naturally is an evasion of the problem. The following items may be of interest:

1. The purely formal parts of the letter: the opening and closing paragraphs.
2. Has the transaction of purchase and sale been successfully com-

pleted? The student should think through how he would go about completing such a transaction.

3. What is the condition of the title? This question may call for a detailed statement of what has been done.

4. How has the money been spent and what balance remains in the lawyer's hands? Perhaps an account is appropriate here.

5. What did an inspection of the premises, city ordinances, building restrictions, etc., reveal?

6. What papers were to be prepared and what has been done about them? One might think of an option to purchase; a title search; two deeds, one a quit-claim; an agreement with the telephone company regarding the easement; etc.

7. What fee does the lawyer charge and on what basis is it erected?

This list provides the instructor with ample material for an interesting discussion with each student on the third Thursday afternoon. The mental process here is more readily understood if we group the steps under three headings.

The first heading covers the *problems to be solved.* It is not too early in the course to point out to the student the variety of problems to be solved. The following list is suggestive rather than inclusive:

1. Is the property in a legal position to be bought and sold? Subordinate questions are: Is the title clear? if not, what must be done to clear it? even if it is now cleared, what future problems may develop—for example, an assessment for paving?

2. With whom are negotiations to be conducted and about what items? Subordinate questions are: Shall we negotiate with the prospective grantor, for obtaining a temporary hold on the property, and for completing the transaction? with what other people shall we negotiate to clear the title?

3. About what special items are negotiations to be conducted? Subordinate questions are: What arrangements shall be made as to the telephone wire and the path? what may we learn of the intentions of the Board of County Commissioners as to proposed public improvements?

4. For what purposes are documents to be drawn? Subordinate questions are: Will they be drawn to obtain a temporary hold on the property, to clear the title, to convey the property, or to improve the condition of the property after acquisition?

5. After the preliminaries are out of the way, how shall the settlement be made? Subordinate questions are: How shall the money and papers be passed? who shall take care of the recording and ultimate holding of the papers? how shall the lawyer notify his client?

The second heading is the *list of documents* to be drawn. It is the next step to item No. 4 in the preceding list of questions. If it is our intention to accomplish the purposes set out there, what documents do we need:

to obtain a temporary hold on the property;
Will an option suffice?
to clear the title;
Will a quit-claim deed; cancellation of the deeds of trust by receipt, release, or otherwise; a power of attorney by the client to the lawyer; tax receipts; an assignment of any existing lease or check; a contract for repairs to the property; be sufficient?
to convey the property;
Will a warranty deed be sufficient?
to improve the condition of the property after acquisition;
Will an agreement with the telephone company, a notice to the school children, a contract for the repair of the property, be sufficient?

Will these be sufficient, or is it necessary to guard our client's interests in other ways and with other legal protections?

The third heading is the outline of the letter to the client. Will there be a sufficient record of the transaction in the lawyer's files if he writes a letter including the following paragraphs?

1. Formal opening
2. History of transaction covering actions taken in first and second headings, describing what the problem was and how it was solved in each case
3. Statement of unfinished business—if any loose ends remain
4. Account of money received and expended, and the balance on hand
5. List of documents with the question whether the client wants them, or whether he would prefer to have the lawyer hold them
6. Paragraph on the fee or an enclosed bill (should it be itemized?)
7. Query whether the client wants the lawyer to do anything else about the property
8. Formal closing.

We are inclined to believe that a law student who had not received some instruction in the art of asking himself questions like the above would flounder a bit the first few times he dealt with a problem of this type. If he knows enough to ask the question, he can probably find somebody to help him answer it. Our concern is that he should know enough to ask the questions. Since no two cases are ever identical, it is not enough to hand him a series of sheets of paper each with a different set of questions on it and let him select the

ones appropriate to each client. There is need for him to develop a habit of mind, a formal routine which considers inclusively many possible questions and then proceeds to eliminate those which do not apply.

A PLAN OF CAMPAIGN AT LAW

This phase of the work is perhaps the most significant item of the course. It is the hub from which the spokes radiate. It has occasioned us the greatest difficulty, and each year we find ourselves dissatisfied with the outline of the mental process made the year before.

The phrase "a campaign at law" with its military connotations describes our reaction to the thinking of a lawyer who gathers facts, marshals facts and law, and uses facts and law to plan the solution of a client's problem. As we examine the matter, however, it occurs to us that this analysis with which we are dealing may be more useful in a situation where the major facts are in existence and obtainable by the lawyers as a base of campaign than in a case where the client wants the lawyer to create the necessary facts to produce a suitable result in the future. These doubts seem to us a healthy sign that we have not become complacent in our own reaction to the task.

Since this exercise is given in the first semester, we reserve until a later time a consideration of the mental process involved in carrying out the plan of campaign. Here the discussion will be in terms of the taking hold, and the reader may find interest in comparing it with the "Suggested Outline of a Legal Case in Action" given in the preceding chapter as the point of departure for our thinking about the course.

We assume that the lawyer is seated in his office, the client enters, the preliminary amenities are disposed of, and the lawyer says to the client, "What may I do for you?" The client then proceeds to relate his grievances. As he does so, the lawyer begins to think. While we are sure that this process of thinking is highly individualized, and that the problems of the various cases are widely different, we believe that the use of some such orderly process as we describe here will be of value to the student in directing him to a view of the law in action, which is not always emphasized in his other courses. By using this or some similar approach to a case, he may be reasonably sure that he has asked himself most, if not all, of the necessary questions, and has forced himself to make the necessary decisions about

what to do next. These decisions are matters of judgment and experience, but the failure to raise, in one's own mind, certain essential questions about the case, may be fatal to the client's interest, and the repercussions of this failure, to the lawyer himself, may be catastrophic.

We are inclined to believe the three basic questions to be raised are:

1. Do I have all the necessary facts?
2. Do I recognize all the pertinent legal theories involved?
3. What shall I do to help solve my client's problems?

After the lawyer can answer the first two in the affirmative, the third calls for sound discretion, strategy, and statesmanship in determining upon a plan for obtaining a solution. Each of these major questions is then broken down into a series of subordinate queries, for example.

1. Do I have all the necessary facts?

The story told by the client may be a complete statement of facts so that the lawyer may rely upon it, and the student may accept them as inclusive and final as the facts in the decision of an appellate court or the hypothetical statement made by the law professor in the classroom. But, even when the client knows all the facts, the practicing lawyer cannot be sure. If he does accept certain matters as a satisfactory basis for operations and finds later that he has overlooked other facts, he may prejudice the whole affair. Thus the following questions occur to the lawyer.

a. How shall I plan a campaign to ascertain the sources of the facts which may be necessary in this case?

There are many possible sources of facts: the client, other human beings, public records, the place of the accident, expert opinions from members of other professions. At some time in the case, the lawyer should make out a list of the possible sources which may prove useful in this particular instance, and check each item on it. Tapping each such source presents obstacles to the lawyer, and he should be aware of them and resourceful in surmounting them. Obviously, a most difficult source of facts is a human being. The most troublesome factor in obtaining facts from a human being is the presence of emotional bloc in his mind. Grief, or anger, or shame, or ignorance, or a dozen emotions may appear as obstacles to his own efforts and the efforts of the lawyer to accomplish the necessary transfer of thoughts from one mind to the other. Thus a second question occurs to the lawyer.

b. How shall I get past the emotional condition of the client or other person to the facts which may be in the back part of his mind?

How far the lawyer can or should train himself to be a psychologist is doubtful, but he accepts a case at his peril. If some facts are not divulged by the client or witness because the lawyer did not know how to get them out of their hiding places in the mind, the result is a reflection on the lawyer.

Once the doors of the client's mind, or those of some other person, have been opened by the lawyer so that the facts within pour out, or are reluctantly dragged out and stand revealed, there is the question whether the client should tell his life in detail from his birth or before, down to the present time. The lawyer wants all the facts which may turn out to be significant in the case, but how does he know what questions are to be asked to keep the length of the interview within reasonable limits?

c. How shall I be sure that I have all the pertinent facts available from a specific source?

The term "pertinent facts" is more inclusive than "legally relevant facts." As to certain sources, such as documents and public records, this question may not be difficult to answer; but as to human beings, several approaches are suggested as aids. None are guarantees.

The *chronological* approach is the most obvious. To employ it, the lawyer has several roads open to him. He may start the client or witness at some appropriate point in the past and by repeating the query, "What happened next?" bring the story down to the moment the client entered the lawyer's office. He may also begin at the present and work backwards. Another method is to allow the client or witness to tell his story in his own way and then say to him, "This story is familiar to you. It is new to me. Let me state it to you as I understand it, and you correct me as I go along." The great problem is to know how far back to go to reach an appropriate starting point.

By going over the same ground more than once, it is possible to fill in gaps and view, as with a magnifying glass, certain stages in the story which appear interesting. The result is a basis of campaign. We should be reasonably sure that no facts before or after the period which we examine are pertinent.

With this material in hand, the lawyer may try another approach to make sure that the area in which the investigation is taking place is adequately covered. The process is not unlike that employed by the

military commander who sends out observation planes to photograph every inch of the area in which the campaign is to be conducted. Every highway, river, bridge, hill, forest, must be checked at different times of day when shadows reveal interesting inequalities in the terrain, and from different angles so that the nature of the topography may be revealed by those who are to make an attack. Three specific items are of interest here: legal matters, economic or business matters, sociological or other matters.

If the client or witness in his story uses certain words of legal import, such as "divorce," "landlord," "accident," or "damages," the lawyer is justified in asking particular and detailed questions about them because the answers may prove very significant. If the chronological approach discloses items of economic import, such as the financial condition of the applicant or opposing party, the amount of money or value of property in controversy, the market value and prospects of investments, the lawyer should be careful to explore them with a view to seeing the case through the client's or witness's eyes as well as his own. If the chronological approach indicates that the sociological welfare of the parties—as in domestic cases—is a matter in the mind of the client or witness, the lawyer is given a new track to be followed. This approach for which, as yet, no adequate descriptive name has been found should develop a large collection of facts which are heaped, as it were, in the storehouse of the lawyer's mind. We think of this process as a weaving together of various strands.

The *evaluational* approach suspects the presence of camouflaged facts and seeks to divide the pile of material into three assorted smaller groups: the true facts, the partly true facts with an indication of the suspected portions, and the assumptions, inferences, conclusions. To accomplish this critical appraisal, it is necessary for the lawyer to evaluate both the source of each fact and himself as an observer of it. For example, the client, for reasons sufficient to himself, but perhaps not realized at first by the lawyer, may have a surface story underneath which may be another stratum of the real facts. There may be several layers of these facts, and the lawyer should not be satisfied until he gets to the bottom. Again the lawyer, as a human being, may be afflicted with a variety of emotions toward his case or client, such as excess of zeal or apprehension for his personal safety, which may bias, prejudice, or color his view of the facts and make him an unreliable observer or even unfit to handle the situation.

By such approaches as these, the lawyer attempts in each case to

answer the main question, "How shall I be sure that I have all the pertinent facts available for a specific source?" If the reader is of the opinion that this is merely a device to make difficult what was originally simple, the answer is that in many cases, of course, the fact gathering is a simple matter, but on other occasions it is not such an easy affair. If we can help the student prepare in himself mental habits to cope with the more difficult problems of law practice, we may hope that he will be able to hold his own with the easier ones. We begin this stage of mental thinking with an aggrieved client. We close it with all the "facts" that we can think of arranged in three groups chronologically and then placed in an appropriate setup of legal, economic, and sociological background material. Further, we have labeled them as dependable facts, partly dependable facts, and summaries, inferences, conclusions, biases, prejudices, assumptions. We have not, as yet, begun to eliminate—merely to collect and catalogue.

2. Do I recognize all the pertinent legal theories?

This question brings us to the second major step in the plan of campaign, which is a matter of marshaling. We first marshal facts and then legal relationships, and finally marshal and evaluate the two together. There are subordinate questions in this stage. The first is:

a. In what form shall I put the facts for permanent safekeeping?

Prior to this time the facts are in someone's mind or at a particular place or scattered here and there in a thousand places. The lawyer needs them on paper in his office so that he, or in his absence someone unfamiliar with the matter, may go to his files and there discover all that is necessary. As to physical places, he needs photographs, diagrams, blueprints, replicas. As to physical objects, he may require the object itself or some copy or representation or chart of it. As to what human beings did or thought, he needs affidavits, depositions, or signed statements. Since these matters may, at some future time, be needed in court, he should be familiar with the rules of evidence relating to the admissibility of various classes of objects and testimony, and should see that what he has in his file is sufficient if the object itself is destroyed or the witness dies. This step is his first contact with the law of the case in relation to the facts of the case.

b. The next question is: "What possible legal theories may bind the parties together?"

We are concerned here with exploring all possible theories of law with a view later to eliminating those which do not apply. The subordinate questions are: (1) Who are the parties to this case? which ones appear in the position of victims or prospective victims? and which ones appear as wrongdoers? (2) Taking each person whose position suggests that he may be one of the victims, what basis for complaint does he have against each of the wrongdoers in turn? This is no insignificant question to be answered. The lawyer should in turn put himself in the position of each party and attempt to view this case through his eyes. Here we reach a point where without, as yet, using legal terminology, we have a list of grievances by certain people against certain other people. We now go forward in a process which is comparable to "translation" or "diagnosis" in which we attempt to pin the correct legal labels on these grievances.

c. The question here is: "How shall we marshal the facts and legal theories and evaluate them?"

There are two major objectives here: first, to switch our thinking from the lay to the professional level; and, second, to see whether for any particular theory the facts are sufficient to bring the case within the operation of the rules in some recognized field of law.

It seems to us that at this point in the process we are describing the lawyer as he begins that sort of analytical thinking which is emphasized in other law school courses. Here, however, he deals not with a completed case carefully analyzed and placed in a casebook by the compiler thereof as the best example he could find of some particular point. Rather, he is dealing with the raw material of law practice which, when it has passed through the refining influences of the thinking processes of the practicing lawyer, the trial court, the appellate court, and the scholar, may some day become worthy of a place in some new casebook still to be written. The probabilities are, however, that the case in hand will never get that far.

The scholar in making his classification has the advantage of the headnote of the reported case, the judicial opinion which determines the legally significant facts, and the brief of counsel. The practicing lawyer sees a client upon the lapel of whose coat appears no tag bearing a convenient designation, such as "anticipatory breach" or "attractive nuisance." Perhaps a single client should have a dozen or two such tags to represent his real legal status.

The law student, as soon as he knows in which field of law he should begin, has little trouble with legal research and the collection of authorities, but there is no part of the mental process of his client-serving which presents greater difficulties to him than this one of selecting the proper field or fields. He finds it necessary to blaze his own trail through what appears a trackless wilderness.

(1) The first subordinate question is: "What legal concept or concepts seem to fit the relationship between two particular parties, one of whom has grievances against the other?" We might have a list of every possible legal concept. In difficult cases an onerous, plodding procedure may be necessary, but, in general, we may expect to find an answer to the query in one of the following:

(a) Do the grievance and relationship seem to be in the contract field? That is: are there the elements of some sort of a contract? has a contract been breached? are there damages?

(b) Do the grievance and the relationship seem to lie in the tort field? That is: is there a legal duty? has the duty been breached? are there damages?

(c) Does the peculiar relationship of the parties bring our problem within certain rules of law? For example: if the relationship is between beneficiary and trustee, or parent and child, or husband and wife, does the law attach special considerations which must be observed?

(d) Does the difficulty lie in the field of governmental regulation—as in criminal law or the administrative law field?

(2) The second question then is: "How shall we break down each of these general concepts and attach to each some significant tag name?" One does not read all of *Williston on Contracts* or of the *Restatement of Torts.* A lawyer saves his time by a further step. He recognizes the contract as being one of landlord and tenant, of vendor and vendee, or of suretyship or insurance. Or he thinks of the tort as an assault and battery, a trespass, a defamation of character, or an invasion of the right of privacy. Or he ascertains that the problem has some of the characteristics of the crime of murder. He is then ready to reach up on the shelf and take down the proper volume of *Ruling Case Law* or of *Corpus Juris,* or of the *Consolidated Statutes* and begin pursuit of the answer to another query, "What is the law?"

The reader should note that this question, while of great im-

portance, is merely one step in the entire process of finding the law. The Legal Aid Clinic course is only incidentally concerned with the technique of legal research taught in Legal Bibliography. We assume that the student can find the law and determine what facts are needed to support a legal theory.

At the end of this stage of the process, the lawyer should have a group of legal theories and principles adequately supported by the facts, and another group of legal theories which have been tested in the light of the facts in the present case and are now shown to be inapplicable. He knows whether he has all the legal theories. He also knows that from this point on, facts and law will march hand in hand.

3. What shall I do to help solve my client's problems?

In this third major stage of the mental process, the question is: "What am I going to do?" Here again are three questions.

(*a*) Toward what goal or goals shall I direct my efforts?

Subordinate questions are: what possible goals does the client desire to reach? what possible goals can the lawyer see? against what measuring rods shall I test these possible goals so that the result shall be something usable?

This whole complicated process calls for judgment and statesmanship of high quality. There are times when the lawyer must supply all the initiative. At other times it will be necessary to persuade the client to accept some objective which the lawyer regards as better than those the client has in mind.

Among the possible measuring devices for an evaluation are the following questions:

Is the particular plan under consideration legally possible?
Is it practicable?
Will it put the client in a better position than he now finds himself?
Is it sound from a business standpoint?
Is it sociologically desirable?
Granted that it is now a good objective, will it also be a good one a year, ten years, or fifty years hence?

Cases vary so greatly that only experience will give the lawyer confidence in making decisions. Yet not until he does make them with confidence, does he have the right to feel that he has reached professional maturity. As long as he is a clerk in a law office, someone else bears the responsibility for planning this major strategy.

(*b*) By what means shall we seek to attain the objective?

In practice it is difficult to think of goals and objectives apart from the means of reaching them; yet, strictly, there are two questions and not one.

The possible means available to a lawyer may be listed as conciliation, arbitration, litigation, legislation, education, and extralegal means by calling upon the resources of other professional fields to care for the problem in whole or in part. The lawyer should realize that there are times when he has not discharged his obligation to his client without making use of such extralegal means. The problem is then: which means is best employed in the present case to reach a particular desired objective

(*c*) What obstacles may we expect to encounter on the way and how shall we surmount them?

Obstacles on the way to the desired objective should be anticipated while the plan of campaign is still in process of formation. Examples may be given again in the question form:

Are there any legal obstacles to the desired plan, such as the statute of frauds or of limitations?

Are there any practical obstacles to the desired plan, such as that the plaintiff is a pauper, the defendant judgment-proof, or that the jury at best will merely award nominal damages?

Are there any ethical objections to the desired plan?

What may we anticipate of the plan of campaign of the opposing party?

The Plan of Campaign

By this time the lawyer is ready to make his considered plan. In simple cases it formulates itself in his mind while his client is talking, and he is ready with it before the client leaves the office. In complicated cases it may take the form of a memorandum of law or even a trial brief. Of course the responsible lawyer will be ready with an alternative if for any reason the plan does not work.

If it is objected that the reader does not think according to this plan, we have no controversial reaction. To us it seems that if we were confronted with a very complicated, important case, and if we followed the routine indicated here, we should emerge with a plan in which we have considerable confidence. But routines are matters often of individual taste, and we do not desire to take a dogmatic position in the matter. Next year we may think of a vastly better approach.

The Process of Retranslation

The lawyer, having gathered the facts and marshaled them, having translated the problem into the field of legal thinking and explored the various questions of law, having constructed and evaluated a plan of campaign, is now ready to carry it out. It is too complicated a matter to describe the process of carrying it out, but the first step should be mentioned. This is retranslation. Here the lawyer explains the plan to the client in lay language and secures the client's approval. The failure of some lawyers to give adequate attention to this step is the cause of misunderstandings, some of which carry the lawyer and the client to the grievance committee of the bar association. This step and others are taught in the Legal Aid Clinic primarily through the medium of actual cases in field or office work.

AN ILLUSTRATION

It now seems proper to introduce a single illustration of the classroom method by which situations are presented to the students requiring them to think and decide matters as previously indicated.

The Setting

The exercise takes place in the classroom. At the front of the room are desk and chairs which a lawyer might have in his office. The class convenes. One of the students is selected to impersonate the lawyer. He sits at the desk. He has no knowledge of the "case" except as he obtains it by asking questions. The "client" is an undergraduate student who has volunteered for the task. An undergraduate student is chosen because part of the exercise consists of observing the meeting of a legally trained mind with one not thus trained. The Public Speaking Classes and the pre-legal society Bench and Bar have co-operated. The "client" may be a man or woman. Histrionic ability is helpful. A preliminary conference between instructor and undergraduate student has been held in which the "client" is treated as an actor who is given the situation, but not the dialogue, and is told to improvise.

The "client" is introduced to the law student in front of the class. The interview then proceeds, interrupted from time to time by the instructor, who emphasizes some point, or by a law student, who asks a question. It is better to restrain these general questions and comments until the interviewing law student has had a fair chance to develop an orderly approach. The presence of the instructor keeps the "interview" moving in a dignified, but informal, manner.

At the conclusion of the questioning the instructor mentions the reasons why the particular exercise was given and tells the students what to bring with them for the Thursday afternoon session when the discussion will be continued. During the exercise the students not interviewing are expected to listen and record such notes as they think should be taken. The experience in recording data is emphasized as a desirable substitute for the use of unaided memory. The sheets of paper containing these notes are often collected and examined by the instructor, graded, and returned to the students with comments.

The "cases" vary somewhat in nature, depending upon the stage of the course, the more complicated matters being placed at the end. It is possible to select particular situations for teaching purposes and to arrange them in some logical order.

It has not been our practice to take a single case and follow it through all the way because such a procedure would be boring to the class. We are concerned rather with a flexibility of mind which is alert to the proper questions to be asked at a particular stage of the case, irrespective of the facts of the particular case. Here a single case is carried all the way through because it is a good illustration, and thus we may save space.

The following material is a copy of such a fact situation as is put into the hands of the "client":

Planning a Campaign at Law—The Means ASSIGNMENT III.

Purpose: The purpose of this interview is to give the student an opportunity to plan a campaign at law and through such planning to evaluate the means which are at hand to reach the possible goal.

Facts Upon Which the Interview Is Based: The clients, Mr. and Mrs. B., are white people fifty years of age. Mr. B. is a tenant farmer on the land of William F. in D. County. On October 1 his daughter, Nancy, was injured at County School. She is nine years of age and is in the second grade at school. On the morning in question she went to school on the school bus, and was in her usual good health. At recess time she and a number of children were playing tag around the fifteen school busses that were parked on the school ground. Two of the teachers were eating lunch and leaning up against one of the busses, while the children were playing. The children were tagging one another, then running and dodging in and around the busses, and at times crawling up into them. Some of the busses were parked with the back towards the schoolhouse. In some manner one of the busses broke loose and crushed Nancy up against the school building, injuring her right shoulder and her chest. She was taken home by one of the teachers, and her mother called a doctor.

After the doctor arrived, he told them it would be necessary for her to be taken to a hospital; so she was taken to Burk Hospital. The admitting officer asked the clients who would be responsible for the bill. Father advised him that they had no money, and that because of much sickness in the family they were already in debt for almost as much as they would get out of the tobacco crop. The admittance officer called the Principal of the school and the Principal called the Superintendent of Schools who advised that the child be admitted and the School Board would be responsible for the bill. Nancy remained in the hospital until the twenty-third of November; however, she still must return for treatments in the Physiotherapy Department since her shoulder and arm are stiff and she has not recovered complete use of these parts of her body. Clients have received a notice from the hospital that it will be necessary for them to have immediate payment of the bill, which amounts to $385. They have just received $425 for their part of the tobacco crop, but if they pay the hospital bill, there will be little money with which to live or to start planting spring crops. When clients called the Principal about the bill, he said that he could not find any authorization for the school to pay the bill.

First Statement of the Clients: "We've got a hospital bill that we've got to pay and we don't think it is right that we should pay it. We want you to see what you can do to help us so that we won't have to pay it."

Point to Be Noted from Interview: The problem presented to the student calls for the surveying by him of the possible means of reaching this goal that is being requested by the client. There are several questions which arise. First, can the Principal and Superintendent of Schools be held responsible, personally, on their contracts with the hospital? Second, what are the possibilities of conciliation between the parties involved. Third, what means can one pursue in collecting a claim from a governmental agency? The possibility and necessity of legislative action in this type of action should be one of the first considerations entering this plan of campaign. After all the usual procedures are considered, it will perhaps be concluded that legislation is the solution, and that a request be made to the next legislature that an appropriation be made to pay this bill.

Applying the Routine

The *first step* for the interviewing law student is to list the sources of information and to suggest some types of information to be secured from each. For example:

a. The *place* of the accident should reveal, to the inquiring lawyer, the state of the ground and perhaps other items of interest.
b. *Physical objects,* such as the bus and its brakes, deserve examination.
c. *Public records* should reveal any minutes of the school board dealing with the problem of injury to children in a school bus.
d. *Human beings* who might know about the matter are the superin-

tendent, the principal, teachers, and the bus driver; other students and perhaps other adults; other members of the family of the applicant; the hospital staff.

Through such an outline the student checks a natural tendency to pick the easiest source and to neglect others not obviously productive. Each source should be explored carefully.

The *second step,* applying to each of the human sources, is to anticipate and, so far as possible, prepare to deal with such factors as:

a. Reluctance of the superintendent, the principal, teachers, and the bus driver to discuss a matter about which something they say may be used against them later.
b. Shyness or extreme volubility, and perhaps unreliability, of the children who may be witnesses.
c. Ignorance, of Mr. and Mrs. B., of the real facts of the case which they did not witness.

The *third step* involves the chronological and other approaches to the facts obtainable from each source. As an example, one or two typical sources may be taken.

a. *The chronological approach.* One way of arranging this material is to proceed to list the *facts* no matter from what source they are secured. This procedure would result in something like the following:

1. The nine-year-old child went to school in the school bus.
2. At noon recess she and other children played tag in the schoolyard.
3. Fifteen busses were parked there.
4. Two of the teachers were eating lunch and leaning against one of the busses.
5. The children, apparently without guidance or supervision, were running around, between, and into the busses.
6. One bus started moving and crushed the child against the schoolhouse.
7. One shoulder and her chest were injured (right shoulder).
8. A teacher took her home.
9. Her mother called the doctor.
10. The doctor took her to Burk Hospital.
11. The admittance officer asked who would pay the bill.
12. Father said that he had no money and explained his financial condition.
13. The admittance officer then phoned the school principal who called the Superintendent of Schools.
14. The superintendent said the School Board would be responsible for the hospital expense.
15. Child remained in hospital fifty-four days.
16. Child continues to return for treatments.
17. Arm and shoulder still stiff; so ultimate damages cannot be assessed.

18. Hospital notifies father that bill of $385 must be paid immediately.
19. He has $425 from his tobacco crop. Payment of the hospital bill will leave no money with which he can live or start planting spring crops.
20. The school superintendent says that he can find no authority for the School Board to pay the bill.

b. *Source of facts.* Another device would conform more accurately to the actual process of fact gathering. Here we should list each source of facts and arrange the facts available from each source in chronological form. For example:

Mrs. B.:

1. Nancy, nine years old, had gone to school on the morning of October 1 at 8:00 A.M. in the school bus.
2. At 11:00 A.M. the same day Miss Smith, a teacher at the County School, came to Mrs. B.'s house in a taxi bringing the child with her.
3. Now Nancy was injured and suffering. Her right shoulder and her chest were crushed.
4. Miss Smith said that a school bus broke loose and crushed Nancy against the schoolhouse.
5. Mrs. B. called Dr. Robinson, their family physician. When he came, he took Nancy to the Burk Hospital, saying she needed treatment.
6. At the Hospital there was a conference between the admitting officer, Mr. Brown; Dr. Robinson; Mr. B. and Mrs. B. Mr. Brown asked who would be responsible for the expense, and Mr. B. said, "We can't pay because we don't have the money." Mr. Brown said, "I'll call the Principal of the school and see what he will do." After he made the phone call, he came back and said, "The Principal says the superintendent says the School Board will be responsible for the bill."
7. The hospital accepted Nancy and treated her from October 1 until November 23, but she is still going back for physiotherapy treatments.
8. The other day Mr. B. and Mrs. B. received from the hospital a bill amounting to $385.

A similar statement for each client or witness would be helpful, but need not be included here by way of illustration.

Further inquiries concerning legal, economic, and sociological matters would reveal data like the following:

c. *Legal inquiries.*

1. Slope of the land in question is a matter of legal importance; so we might consult a surveyor about it.
2. Brakes of the bus play a part in the case; so a report from a good garage mechanic will be helpful.
3. Condition of the child's shoulder and chest are significant; so we want

a complete medical report with opinions of future condition.
4. Exact wording of the conversation between the admission officer, Mr. Brown, and the Principal is important; so we need to know it.
5. We need to know something about the school rules relating to supervision of the playground. Who was in charge? Were the children warned to keep out of the busses? Was there anybody charged with the duty of enforcing these rules?

d. *Economic inquiries.*

1. Financial condition of Mr. and Mrs. B. is important both from the standpoint whether they can pay the bill and whether they will be affected by having a judgment taken against them if the worst should come.
2. If Mr. and Mrs. B. pay the bill with $385 out of their $425, how will they get along?
3. Financial condition of the School Board may be of interest.

e. *Sociological inquiries.* This term has a miscellaneous flavor. These inquiries are useful in various types of cases, particularly domestic relations matters. Perhaps in the present situation, greater knowledge of the family group would reveal pertinent facts. There is, however, a law of diminishing returns in this situation, and there is no reason to spend too much time on it.

f. *Evaluational approach.* This approach is difficult to describe on paper. It is necessary to examine critically each source of facts. The query constantly to be kept in mind is whether this item which appears to be a fact is a fact, a quasi fact, an assumption, conclusion, bias, inference, or even a deliberately false statement. The lawyer should also suspect himself. Perhaps in the instant case Mrs. B.'s recollection of the conversation about the cost of medical care is affected by her self-interest. Perhaps the teachers who saw the accident have something special to say because they may think of themselves as implicated. The bus driver in particular may be trying to excuse himself. Without seeing the people involved, one can hardly form an estimate of their accuracy or of our own qualifications as an observer.

The *fourth step* relates to marshaling the facts. Putting the facts in permanent form for safekeeping involves at least the following:

a. Surveyor's report on the place of the accident, photographs, etc.
b. Garage mechanic's report on the bus and its brakes.
c. Complete hospital report on Nancy's condition, including copies of x-ray plates showing original injured condition of her shoulder and chest and subsequent changes under treatment.

d. Affidavits from Mr. and Mrs. B. and Nancy.
e. Query affidavits from the admission officer of Burk Hospital, also the schoolteachers, principal, superintendent, and bus driver.
f. Affidavits from school children who were witnesses.
g. Perhaps depositions should be taken.

The *fifth step* relates to possible legal theories of relationship among the parties. This process is comparatively simple. The following parties in the case appear to be complainants.

The Hospital
Mr. and Mrs. B.
Nancy.

The following parties in the case appear to be connected with the problem rather as defendants.

Mr. and Mrs. B. and Nancy
The people at the school in varying degrees.

If the hospital is the plaintiff and Mr. and Mrs. B. are the defendants, the nature of the complaint appears to be an attempt to force them to pay a bill for medical services rendered.

If the hospital is the plaintiff and the school authorities are the defendants, the nature of the complaint appears to be their alleged assumption of the obligation of paying the bill which apparently Mr. and Mrs. B. were asked to pay.

If Mr. and Mrs. B. and/or Nancy are the plaintiffs, does it make any difference that the first two are the parents of the third or that Nancy is only nine years of age?

If any of these three are plaintiffs and the school people in varying degrees are defendants, the case seems to be related not to the bill, but to the failure to protect the little girl.

The *sixth step* attempts to label these legal ties between the parties.

Where the hospital is the plaintiff, the following situations appear to exist:

Hospital vs. Mr. and Mrs. B.: The problem appears to lie in the fields of contract and special relationship of parent and child. Under the general heading of contracts, it appears to lie in the area of implied contracts, quantum meruit for services rendered. Under the general heading of parent and child, it appears that the liability of parents for the necessary expenses of their children is a point of departure.

Hospital vs. Nancy: The problem appears to lie in the field of contract. In this field, the question regards the liability of minors for contracts, for necessaries.

Hospital vs. the School: The case rests upon the agreement by telephone and the authority to make such an agreement, and also upon governmental regulations. Under the contract concept, we find, assuming the promise to pay was really made, a question that arises in the field of agency. Did the person making the promise have authority to do so? In the field of governmental regulations is the question of whether some statute exists covering injuries sustained in connection with the operation of school busses.

If Mr. and Mrs. B. and Nancy are the plaintiffs, the following situations appear to exist.

Mr. and Mrs. B. and Nancy vs. the School: The problems lie in contract, tort, special relationships, and governmental regulations. The contract problems deal with the obligation on the part of the school people to reimburse Mr. and Mrs. B. for anything that they may have to pay the hospital. The tort problems lie in the field of negligence. Negligence of the principal, the teachers, and the bus driver may be of different sorts. The special relationship problems are whether Mr. and Mrs. B., as parents, have a separate claim from that of Nancy and certain procedural matters such as a guardian ad litem to bring a suit on behalf of a minor. The government regulation problems are whether a statute or other authority exists outlining the nature and extent of tort liability in connection with the operation of a school bus; the supervision of school playgrounds; the question of a possible crime or fraud by the school authorities.

The *seventh step* leads into that portion of our thinking where the major question is: "Now that I have the facts and the law, what am I going to do for my client?" The first subordinate question here is: "Toward what goals or objectives are we to go?"

The clients tell us one possible goal that they have in mind—not to be forced to pay the hospital bill. We supply another—the recovery of damages for the injury to the child. Some students question whether the lawyer should mention something of this sort to the client when the client himself has not thought of it. It would seem that the client has a right to know his entire legal position and that while it is his responsibility to decide whether he wants to sue the school board, the lawyer should not keep silent.

Are these two possible objectives legally, practically, sociologically possible and desirable, and will they be satisfactory if viewed on a

long-time basis? We find such answers as the following: Let us assume that the law in the particular jurisdiction justifies us in telling the client we have a fair chance of winning a suit if the matters go that far. There seems to be no practical objection to these objectives. Sociologically, it may be worth inquiring whether the social or economic position of Mr. and Mrs. B. or Nancy will be affected by such a suit. Will the hospital refuse to give more treatment? Will the school authorities exact vengeance upon Nancy if she continues in school? Will the position of Mr. B., as tenant, be jeopardized by suit brought?

Similar questions arise when we face the future. Let us assume, however, that we do decide to refuse to pay the hospital and prepare to demand damages from the school authorities. In selecting a goal the client does not always demand his pound of flesh.

The next question concerns the means by which we hope to reach the goal. Shall we employ conciliation, arbitration, litigation, legislation, education, or extralegal means? Immediately we may eliminate from consideration, arbitration, education, and extralegal means. As to a possible suit brought by the hospital, we may attempt conciliation and, failing that, accept the hazards of litigation. As to the claim against the school authorities, we may again attempt to obtain a settlement out of court or bring suit.

Beyond the satisfaction of the needs and desires of our particular client there is the possibility that this case may reveal some inadequacies in the existing law. Accordingly, if we regard ourselves as social engineers in addition to client servers, we shall strive to use this case as an illustration to the legislature of the need for change.

The final question deals with the obstacles we may meet on the way to each goal. The possible legal, practical, and sociological obstacles which one might meet are considerable, but again the matter is one in which it is difficult to discuss them without real people to whom such considerations will make a real difference.

The other question, however, "What may we anticipate as to the plan of campaign developed on the other side?" is even more complex. Perhaps enough has been indicated here to illustrate the nature of the process without encumbering the reader with too many details.

A practicable procedure would appear to be:

1. Application to the School Board for a conference regarding the situation to see what, if anything, can be worked out amicably.

2. If efforts at settlement fail, then it would be well—provided time permits—to await the outcome of any proceedings that the hospital may

take. If the statute of limitations has nearly run, the best plan would be to start a tort action at once against the School Board.

3. If time permits, an application to the legislature for a bill awarding damages for negligence would seem a safe step.

As a result of this mental process, the lawyer should be able to feel that at least he has asked himself the most obvious of the important questions. How he answers those questions is another matter. In the Legal Aid Clinic course the office work supplies the student with this further type of experience.

THE SCHEDULE OF CLASSROOM EXERCISES DURING THE FIRST SEMESTER

In addition to the office work and certain miscellaneous assignments in briefing during the first semester, the course is limited to the classroom or laboratory exercises. A statement of the topic of each of these classroom or laboratory meetings, with a note on what is discussed on the ensuing Thursday afternoon conference, will give definiteness and an idea of spacing of the various steps in the course.

1st hour—A general discussion of the course and the organization of the class. Introduction to the staff and the Legal Aid Clinic Office.

2d hour—In place of the classroom meeting the students are taken on a trip to the courthouse at night. The Thursday meeting is devoted to a discussion of the trip and the type of notes and scrapbooks which the students should start keeping.

3d hour—First exercise in letter writing. Letters starting a case. Students are required to bring three letters such as might be used for collection of money.

4th hour—Second exercise in letter writing. Letters carrying on a case. Students are again required to bring letters, this time a series of three which might be used by attorney for plaintiff in prosecuting a claim for tort injury.

5th hour—Third exercise in letter writing. Letters concluding a case. Students are required to bring in letter—in this case an elaborate one—dealing with purchase of real estate.

6th hour—First exercise in planning a campaign at law.

A. *Fact Gathering. Do I have all the facts?*

Planning a campaign to determine the sources of facts.
Dealing with human obstacles to securing facts.
Two "cases" are presented by undergraduate students who take the part of the client and are interviewed by one of the law students.

On Thursday the cases are analyzed and methods of solution are discussed.

7th hour—Second exercise in planning a campaign at law.

A. *Fact Gathering. Do I have all the facts?*

The *chronological approach*

At this and subsequent class meetings, "cases" are presented to be discussed on Thursdays. The only differences are the points being illustrated.

8th hour—Point being illustrated is: *Other approaches*

9th hour—Point being illustrated is: *Evaluational approach*

10th hour—Point being illustrated is:

B. *Marshaling. Do I have all the legal theories? Marshaling the facts*

11th hour—Point being illustrated is: *Marshaling the legal theories.*

12th hour—Point being illustrated is: *Evaluating the legal theories in the light of the facts.*

13th hour—Point being illustrated is:

C. *Using the facts and how to plan a campaign. What shall I do for my client? What are the goals of endeavor?*

14th hour—Point being illustrated is: *By what means shall we attempt to gain each goal?*

15th hour—Point being illustrated is: *What obstacles may I anticipate?*

16th hour—If this hour is available, it is used either for a demonstration by social workers of the manner in which they obtain their facts or for an exercise in determining the size of a fee, or for a general review of the work of the semester.

Thus, in all too brief a period of time, an effort is made to give the student a slow motion picture of the mental process of a practicing lawyer taking hold of a case.

CHAPTER III

SECOND SEMESTER METHODS

THE general objective which runs through the second-semester exercises is to help the student learn to plan, to make decisions, and to carry out his program as a qualified lawyer does when he is closing out a case. In the preceding chapter reference was made to one stage in the mental process called "The Means." There a list was given of the usual means available to the lawyer: Conciliation, Arbitration, Litigation, Legislation, Education, and Extralegal. Litigation receives emphasis in other law school courses, such as Practice, Practice Court, and Pleading. There was no reason for us in planning our work to consider a duplication. Consequently, we turned our attention to the methods of Conciliation, Legislation, Education, and Extralegal Procedures. During the second semester we have time only for classroom exercises in Conciliation and Extralegal Procedures. Other matters receive some attention in the cases arising in the office work. If at sometime in the future a graduate course in Legal Aid Clinic work is made available, these other matters might easily be developed.

Here we set down certain conclusions we have reached regarding classroom methods of teaching the thinking process of the lawyer in conciliation proceedings.

In recent years the growth of interest in pretrial procedure suggests that, in the future, we may expect more emphasis on conciliation proceedings. The student, whose other law school courses have been closely related to the litigation process, finds difficulty in making an adjustment here. A courtroom trial is like a prizefight, with rules, time, a referee, and an authoritative decision. A conciliation proceeding, for all its pacific name, is more like a brawl in a back alley at night. There are no pleadings to set the issues. There are no rules of evidence. Etiquette depends upon the individual inclination of the parties involved. When a conciliator is present, the proceeding has some semblance of order. When no one but the contending parties and their lawyers are present, the sanctions for peaceful adjustment are less definite than a court decree enforced by sheriff or contempt proceedings. The object of a conciliation proceeding is to draw together the minds of two or more presently contending parties into

an agreement based on a compromise of conflicting claims. If the conclusion is reasonable and endures, the work has been done well.

The setting of the proceeding may be a judge's chambers, a lawyer's office, a streetcorner, or anywhere. We assumed the presence of at least one lawyer. If there are two lawyers, each of them must do the necessary thinking for his own client. While we are not satisfied with the following outline of steps, we have found it difficult to agree upon a more detailed statement. This problem requires greater exploration.

The reader who contends that this listing is far too orderly, will understand that it is merely a device to bring the subject to the attention of the student so that he will not overlook any of the essential questions and decisions.

TEACHING THE THINKING PROCESS OF THE LAWYER IN CONCILIATION PROCEEDINGS

The points of emphasis are the following: the general process of inaugurating a conciliation; exercises in which the lawyer prepares himself and his client for participation in a conciliation; exercises in which the client's problem is brought to a conclusion by the drafting of a legal document; exercises in which the resources of other professional fields are made available by the lawyer for the solution of the client's problem.

(1) The first problem for the lawyer is to determine whether his role is to be that of an impersonal but sympathetic mediator, or of a frank advocate seeking, by ethical means, the best possible advantage for his client. It should save him much future trouble if he determines this question at once and makes his position clear to the contending parties. A number of consequences follow this decision. For example, if he is to be an advocate, it may be ethically desirable for him to advise the opposing party to secure other legal aid before proceeding. If he is a conciliator, he may forfeit the right to appear later as an advocate for either of the parties in the same subject matter.

(2) Another question is to decide whether this particular disagreement will yield more readily to the conciliation process than to some other "means," such as litigation. Ordinarily clients will save time, trouble, and expense by adjusting their difficulties out of court. On the other hand, certain situations demand the formality of litigation and the permanence and sanction of a court decree.

(3) Another problem seems to be to gain some preliminary un-

derstanding of the contending parties as human beings. Since the mind of the lawyer will be engaged in endeavoring to bring their minds together, he should be interested in knowing as much as he can about their personal characteristics. Stubbornness, sensitiveness, and fear of consequences are factors in conciliation.

(4) Another item is to determine the issues about which there is disagreement. In the litigation process this function is performed by the legal requirement of pleadings. In conciliation, however, in many cases, little is set down in writing in advance. The lawyer often on the spur of the moment must contemplate, explore, identify, and marshal the areas of conflict from an unorganized mass of facts and points of view. He can never be sure that he has measured the nature, extent, and direction of the minds of the parties. In addition, he needs to be constantly on the alert, or some ill-advised remark or question by himself or his client may make matters worse and add new facts and complications. The successful determination of this situation requires a maximum of resourcefulness, tact, and ability.

(5) When the issues have been determined somehow or other, the lawyer decides in which order he should take them up. Sometimes it is a good policy to approach first those items on which there is little disagreement. For other people it is best to go right to the major issue. Again, in dealing with a single issue, the procedure for reaching a conclusion or compromise varies. It may be desirable to encourage each of the contending parties to talk himself out and thus bring himself to a more conciliatory frame of mind. Again the principle of "the least said, soonest mended" applies. In certain situations the lawyer takes control of the proceeding; in others he allows the client or the opposing party to lead the way. The parties jockey for position like two wrestlers until finally someone mentions a point which may be used as a basis for negotiations. This basis is often the naming of a figure. "I will take or offer $1,000." Such a statement focuses the discussion around the point. Sometimes it is wise to name at once the extreme limit of one's willingness to compromise. Again it is strategy to ask something beyond what one expects and then gradually make concessions. This mental process depends so much upon the facts and circumstances of the individual case that we have not as yet felt able to agree upon a more detailed routine. Certainly the above order is given merely for purposes of exposition. Each experienced negotiator follows some pattern of his own. Thus far we have been unable to say to a student: "This is the way you should think."

(6) At some point in the discussion the lawyer should make up his mind about the respective strengths and weaknesses of the bargaining positions of the parties, including their personal characteristics. From these conclusions he may proceed to persuade, coerce, or negotiate. There seems to be a stage in which "clubs" are used to bring one or other of the parties into line, and the lawyer must be ready to fashion and use the available clubs.

(7) In some of the more complicated situations after tentative agreements have been reached on individual points, the settlement, as a whole, should be reviewed and approved. By such a process the lawyer tends to avoid subsequent complaints of a dissatisfied party that he did not understand what was being done.

(8) In many such procedures the ability and the willingness of the parties to carry out the terms of the agreement require thought, if the time spent in conciliation is not to be wasted.

(9) In concluding some agreements of this type the lawyer should see to it that certain records are made or other formal acts completed. These may vary from having the parties shake hands to the execution of a release, a deed, a contract, or a consent decree.

(10) Finally, the lawyer needs to give thought to ways and means of protecting himself if future misunderstandings arise. One customary method for him is to make a careful record of what transpired and place it in his own files. Another is to conduct himself with scrupulous attention to the highest ethical standards. This is not as easy at is seems, particularly at the stage where one is engaged in "clubbing" his opponent into a settlement. But it is none the less imperative if one is to continue to retain general public respect.

We have attempted, with little satisfaction to ourselves, to summarize the task of the lawyer, either as advocate or conciliator, in a conciliation proceeding. It seems to include the following: keeping the tone of the conference on a basis where conciliation is possible (if the parties get up in anger and walk out of the room, damage has very often been done); keeping the affair moving so that some conclusion is reached within a reasonable time; and keeping the negotiations on an ethical plane.

THE CLASSROOM OR LABORATORY WORK

The procedure in the classroom during the hours devoted to conciliation is as follows: (1) A case is selected, sometimes one in which the lawyer is to appear as advocate, and again one in which he is to be conciliator. Examples of the former are: a parole hearing in which

the issue is whether or not to commute a death sentence; a landlord and tenant dispute before an official of the Rent Control Board; a juvenile court case; a hearing before a legislative committee upon a proposed bill. Examples of the latter are: a conference among creditors of a prospective bankrupt, a conference between a lawyer and an insurance adjuster relative to the settlement of a negligence claim. (2) Undergraduate students are selected to play the parts of the various "clients," and are informed what positions they are expected to take. (3) The law students who are to participate are given some preliminary information concerning the nature of the exercise so that they may make such preparation of themselves and their clients as seems to them appropriate. The other details are considered later in this chapter where the discussion relates to the drafting of legal documents. There an illustration is given.

EXERCISES IN PREPARATION FOR A CONCILIATION PROCEEDING

The importance of preparation for any proceeding in which a lawyer is to participate should not be underestimated. The element of surprise has wrecked many a client's hopes and reasonable expectations. It is one of the responsibilities of the better lawyer to guard against the unexpected. This task is more difficult than it might at first appear because, if the lawyer shows an excess of zeal for his client, he may find that he is approaching too closely for comfort to falsifying the facts. In conciliation the lawyer himself often needs a conscience as well as ability to anticipate.

The exercises, as we have developed them, have several specific objectives: (1) to demonstrate that in a given case the reasonably anticipated problems have been considered and a plan has been made to cope with them, if they arise; (2) to indicate how in a given case the client shall be made to understand the objective as well as the means to be employed to reach it so that what he says and does may help and not hinder; and (3) to warn the student of the pitfalls surrounding the unprepared lawyer.

THE MATERIAL

Because the proceedings of conciliation conferences are seldom taken down in writing, we have been unable to secure the best material for teaching purposes. The second best is the stenographic report of testimony taken in litigated cases. In this record we are looking, not for material for a course in applied evidence, but for indications that the lawyer has made a mistake either in the ques-

tion which he asks on cross-examination, or in the answer which the witness gives on direct examination. We are not concerned, except incidentally, with the topics covered in Practice Court, but with what a lawyer may do in his own office before he goes to the courtroom or the conference table to prepare himself and the persons who are to attend the meeting with him. This material is easily secured from the court stenographer.

THE MENTAL PROCESS

It seems to us the mental process may be outlined in the following terms: (1) a goal of the conciliation conference is selected (perhaps alternative goals in the event that a change of plan is necessary); (2) the means of reaching these goals are worked out with some care; (3) the lawyer then goes over the object and means with his client and with any other people who may attend; (4) having in mind the class of person his client is, the lawyer then provides him with certain routine information appropriate to such a participator; and (5) the lawyer, considering the personal characteristics of the client, gives him further specific advice, instruction, preparation.

Limitations of time for classroom exercises have cramped an investigation of this process, but we distinguish certain classes and types of clients with respect to this problem of preparation. Since our material is taken from the field of litigation, the categories bear a reference to the evidence which they may give under the conditions of direct- and cross-examination.

At present the material gathered by the Legal Aid Clinic staff deals with the following types of witnesses: (1) The eyewitness. Sometimes he is a trained observer like a traffic policeman; at other times a layman without experience in legal matters. In still other instances he is called upon to express a lay opinion on a technical point. A different form of preparation is needed for each type. (2) A miscellaneous group, such as the alibi witness, the child witness, the woman witness, the character witness. (3) The expert witness.

THE CLASSROOM EXERCISES

(1) Before the class meeting an undergraduate volunteer is selected to serve as the client.

(2) He is given a copy of the portion of the stenographic transcript to be used. Little preparation is required beyond reading over the material and familiarizing himself with the facts, the issues, and the contentions.

(3) In the classroom the instructor briefly states the facts of the case, the issues, the contentions, and the reason for presenting this particular witness. He then conducts the direct examination just as it appears in the stenographer's record. He reads the questions, and the "witness" reads the replies.

(4) One of the law students is then directed to conduct what seems to him to be an appropriate cross-examination. Here the witness must improvise replies. Accordingly, he should have a clear understanding of the surrounding circumstances.

(5) There is a discussion, followed by a reading of the cross-examination as actually given in the stenographer's record.

Frequently the student who does the cross-examining feels handicapped by not having as complete a grasp of the entire case as would be available to him if he were the attorney. How to give the necessary information without devoting too much time to the exercise is still an administrative problem. We tried having the class read the pleadings. But the statement by the instructor seems about as practicable as anything. The Thursday afternoon conferences are devoted to the more obvious mistakes and to ways of anticipating and avoiding them.

No illustrations of the material used seem necessary here. Stenographic records of litigation contain their share of situations where the lawyer has asked a question which sank his client's case. If the law student learns nothing more than the fact that he can make similar mistakes in any sort of meeting, his time is well spent. It is his fault and not that of the client.

EXERCISES IN WHICH THE CLIENT'S PROBLEM IS CONCLUDED BY DRAFTING OF A LEGAL DOCUMENT

A course in office practice or in drafting legal documents is part of the curriculum of many law schools. The instruction with respect to legal documents as given in the Legal Aid Clinic is of a different nature. Because time is limited, we deal with the mental process leading up to the drafting of the document. We do not offer this work as a course in legal writing. The attention of the student is directed to the client's problems and to their solution by conciliation ending in a document.

THE MENTAL PROCESS

Insofar as we have been able to isolate and label the various steps in the mental process, they appear to include a series of decisions along the following lines:

(a) It is assumed that the facts have been gathered, that the issues to be disposed of are clearly observed, and that the problems of law have been diagnosed and adequately briefed. These exercises fall naturally into the work of the first semester.

(b) The unique character of this exercise begins at the point where the student, planning his campaign at law, must make a decision whether or not a legal document is the most satisfactory method of solving the problem. Before making this decision he should have a substantial knowledge of the present and the predictable future problems of the client, which are to be disposed of by the document; an understanding of the limits of effectiveness of documents in solving human problems; a thorough understanding of the formalities of the execution, acknowledgment, recording of documents which may make them more useful in a greater variety of situations.

(c) Since it is impracticable to attempt to solve every present problem of the client by the use of a document, a selection and an evaluation of present problems are needed. Perhaps the most important part of this step is acquainting the client with the considerations that weigh with the lawyer, so that the former may not, at a later time, complain that he was misled, or that advantage was taken of him.

(d) A similar selection and evaluation of future possible problems should be made so that they can be covered in the document. Here the lawyer is engaged in the very delicate task of predicting and of endeavoring to insure his client against the uncertainties of unknown or only partially known eventualities.

(e) At some stage of the process a decision is needed to determine what type of document is most likely to produce the best result. In certain situations the answer to this question is so obvious that there is a tendency on the part of the student to overlook other possibilities. Resourcefulness of a high order is often required to make the selection. Still another phase of this same problem is the determination whether a complex document or a simple one will suffice. One may think of a penciled memorandum to which the parties have appended their initials or a highly formal group of notarized documents.

(f) Material should be marshaled into appropriate paragraphs so that the ideas expressed may run clearly, concisely, and logically through the mind of the reader. The Legal Aid Clinic course does not have time for much consideration of the final step, namely: the choice of language, spelling, punctuation, and similar problems of form. Perhaps the omission is not completely unjustified because if the student has been able to think his way clearly along the foregoing steps, he should have less difficulty in going the rest of the way.

The Classroom Exercises

(a) At the beginning of the year the students choose the various kinds of documents which they would like to learn how to plan and work out. Encouraging student selection where only a few can be drawn has several psychological advantages. Among the more popular types selected in the past are: mortgages, separation agreements, composition agreements of creditors, leases, partnership contracts.

(b) The program calls for a gradual progression from the easier to the more difficult matters. A variety of classifications is possible, but the following has seemed to work well.

1. At the first hour—a document where one person alone signs. For example: a will, deed, court order, mortgage, power of attorney.

2. At the second hour—a document where two or more people sign. For example: a contract, lease, partnership agreement.

3. At the third hour—a more complicated fact situation though the document may be a simple one. The purpose here is to confront the student with some practical business or ethical problem and to have him work his way through or around it.

4. At the fourth hour—a complicated fact situation where it is not clear what sort of document will solve the problem or whether any document will cover the matter. The purpose is to force a decision on what is the best method of solving the problem.

This list is capable of considerable expansion.

(c) The staff begins with an actual document and works back to the classroom exercise. This provides something realistic to show the students for purposes of comparison with their own completed work.

The next step is to select two or more volunteer undergraduates who are willing to impersonate the parties in the "case." They are given copies of material describing a fact situation such as is used in the first semester, only more complicated. It is, again, as though actors were given by the playwright a series of situations, but no dialogue, and told to improvise. Of course, they are not to be allowed to go beyond the basic situation. The instructor keeps the exercise in hand.

One or more law students are designated to participate. They are sometimes told the type of document to be considered; sometimes not. The reason for telling them is to save time and enable them to arrange in some orderly fashion the questions which they are going to ask and the kinds of information which they may need. They

are not aware of the facts of the particular case. An illustration of such a fact situation will be found below.

The procedure in the classroom is as follows:

1. The law student is introduced to the "clients" and brings them to a desk in front of the class where they are seated.

2. The law student inquires what he can do for the "clients." They reply with a prearranged first statement. From then on the questions and answers are spontaneous. Occasionally the instructor interrupts to ask a question or to point out a matter of significance. Occasionally the "client" inquires how to answer a question. The other members of the class are encouraged not to interrupt, at least until the student doing the interviewing has had a fair chance to make and develop a plan.

3. At the conclusion of the hour the instructor summarizes the problem, presents a few questions for consideration by the class at the next Thursday conference, and informs the class what each member should bring with him at that time.

At such a meeting in connection with the drafting of a document the students may be asked to bring with them:

(a) A list of questions which came to their minds as they consider the problem. The questions may be of law, fact, ethics, procedure, practical business, or otherwise. From this list the instructor may gain a fair picture of the student's imagination. He himself may provide a list of the problems which he has in mind in presenting the exercise and may show it to the student. This should help the student to marshal his thinking in an orderly manner. The reader should remember that the classroom exercise is designed more to raise than to answer questions.

(b) An outline of the document to be drawn. The outline need go no further than a statement of what should appear in each paragraph of the document. This outline enables the instructor to gain an impression of the ability of the student to marshal material and to see a solution to the client's problem.

The instructor by showing the student a copy of the document from which the exercise was originally prepared may provide a basis for comparison with the student's work.

If notes are kept of the questions raised by the students, the exercise may be improved the following year.

ILLUSTRATION

The following material is used as an exercise to illustrate the process of handling a client's problem which is concluded by the drafting of a legal document. In this particular "case," which is based on a real situation, the drafting of a lease for premises to be used as a men's clothing store is under consideration. The problems cannot be solved merely by going to a form book and copying out a lease. Here are two persons with a particular situation which requires individualized care. The benefit to the student arises from his effort to understand the situation and see what can be done about it.

In this "case" two law students and two "clients" are used. One "client" is a tenant; the other, a "landlord." Each is "represented" by a law student. If time is available, each law student has a preliminary conference with his "client" before the class meeting; otherwise everything must be accomplished at the one session. By crowding the whole process into an hour the law students are put under special pressure. This compression of time has its advantages as well as disadvantages. In actual practice prompt thinking is an important factor.

Each "client" in advance of the class meeting is handed a sheet containing the "facts" and is instructed about his part in the case.

SHEET No. 1 in the following group is for the Tenant, and SHEET No. 2 for the Landlord. The law students, before they meet in the classroom, know nothing of the facts except that the problem lies in the field of leases. Each law student must secure as rapidly and as accurately as possible from his "client" the information which he believes important. He is then expected to meet the other law student and "client" in a conference to work out details.

The histrionic ability of the "clients" creates a realistic atmosphere. The instructor is present to see that the meeting moves forward steadily and that the participants and the class do not become too enthusiastic.

DRAFTING DOCUMENTS

LEASE AGREEMENT

SHEET No. 1

FACTS FOR TENANT.

You are to assume that you are president of Esquire, Incorporated, a corporation organized under the laws of North Carolina. You have a chain of stores in all the larger cities of the state, and you are doing a business of a million dollars a year selling men's clothing. You have

come to see your lawyer about renting store space in Durham for the purpose of opening a new branch. Your lawyer takes you to the office of the lawyer representing the landlord who owns the property that you want to rent. You will assume that this property is situated on the south side of Main Street between the National Bank and Ajax Drug Store. You have looked it over and find that the present tenant who sells photographic supplies is going to terminate his lease on the first of May, and you want to move in the building on that date. You are anxious to lease the property for a period of ten years, anticipating that your business will increase during that period because you plan to put a staff of exceptionally capable salesmen in charge of the store. You plan to spend $10,000 in advertising the first year and to install a stock of up-to-date men's clothes, which will attract the better class of trade.

The property which you want to rent has a 25-foot front and 50-foot depth. There are also a storeroom 25 feet square, and a basement 16½x21 feet, approximately. The drugstore now occupies part of the space.

You offer $200 a month for ten years for the store, the storeroom, and the basement. You can make your own calculations about how much business you expect to do the first two years and can show that as time goes on you expect the business to increase, but that probably during the first five years you will be spending your time making contacts and building the business up so that there will be, if anything, a loss during those years. You must make up the deficit in the second five years of the term. In the course of negotiations you will agree to settle on the following basis: (1) for the store $300 a month for the first three years, $325 a month for the second three years, and $350 a month for the last four years. For the storeroom space no rent at all for the first five years; but $15 a month for the second five years.

Other points on which you will want to negotiate are the following: (1) What are your responsibilities if the whole building or a part of it burns down? Must you still pay rent? (2) You do not want the place at all unless the landlord will agree not to lease any other store space in the same building, which includes several stores, to any other agency engaged in selling men's clothing. (3) You want to insist that the landlord keep the roof, outside walls, etc. in good shape, pay all the taxes, insure the building against fire, insure the plate glass in the windows. On the other hand, you agree to repair and keep in repair the interior, and make such improvements as you deem advisable provided they do not affect the walls. In any case of any question, you are willing to refer the matter to your architect. (4) You want the right to put various signs on the outside of your premises. (5) When pressed, you will agree not to assign or sublet the lease and you will agree that if you go into bankruptcy the lease shall terminate immediately. (6) You want the landlord to insure the improvements and repairs to the building in an amount of $4,000 with the understanding that this item will be diminished by 10

per cent each year. You and the landlord will pay each one half of the premium.

You should be prepared with a statement of the assets and liabilities of your company and three letters of recommendation, one from a chamber of commerce and one from the Civic Club, of which you are a member, indicating that you and your concern are reputable. You should not present these unless you are asked for them.

The law student does not see this sheet.

April 8, 194..

To Whom It May Concern:

Esquire, Inc., have been banking with us for the past ten years, and their credit rating is excellent. They operate stores in R....., K....., R....., W....., and E..... During this period we have had occasion to loan Esquire, Inc., money several times. Their obligations have been met promptly, and we are ready, able, and willing to advance them money on request.

Very truly yours,
M. R. Gotrocks, President
Peoples Bank.

April 8, 194..

To Whom It May Concern:

Esquire, Inc., have been a member of the R..... Chamber of Commerce for ten years. They carry two memberships of $50 each, and their dues are fully paid to date. The Company appears to be making a lot of money. All businesses seem to be making money in R.....

The young men in our city consider their line of men's merchandise to be the best. The company appears to have the majority of the better trade among the members of the Chamber of Commerce.

Very truly yours,
Give Me Credit, Secretary
R..... Chamber of Commerce.

April 8, 194..

To Whom It May Concern:

Mr. D., of Esquire, Inc., has been a member of the R..... Civic Club for ten years. He stands high in the community and is considered an exceptionally good contact man. During the years 1938-1939 Mr. D. served as our district representative for Civic International. Any courtesy which may be extended him will be appreciated.

Very truly yours,
Tom Brown, President
R..... Civic Club

FINANCIAL STATEMENT

The following statement shows our true financial statement as of April 8, 194—, and is given for use in connection with my application for lease on property located at .....
(Street) (City) (State)

ASSETS		LIABILITIES	
Cash on hand in Bank	$ 10,000.00	Notes Payable (Secured)	$10,000.00
*Stocks	50,000.00	Notes Payable (Unsecured)	20,000.00
*Listed on back of this sheet.			
*Bonds	20,000.00	Mortgages on this property	
Notes Receivable (Good)	3,000.00	Mortgages on other property	
Bills Receivable (Good)		Taxes Payable	
Accounts Receivable (Good)	35.000.00	Bills Payable	4,000.00
Salable Merchandise	75,000.00	All other Liabilities	
*Real Estate			
All other assets			
Total Assets	$193,000.00	Total Liabilities	$34,000.00

There are judgments and Mechanics' liens pending against me for $ none.
I am endorser to the extent of $ 20,000.00.
(If none, write "None" in above spaces.)
I carry $ 50,000 life insurance payable to the following:
Esquire, Inc.

My net income for 194..... was for Salary $..... Business $..... Investments $.....
My net income for 194..... was for Salary $..... Business $..... Investments $.....
My net income for 194..... was for Salary $..... Business $..... Investments $.....

The following is a list of equipment and personal property owned by me and located in the above property with all encumbrances or unpaid balances of purchase price thereof. (Answer required only in loans on income property.)

EQUIPMENT	ENCUMBRANCE OR UNPAID BALANCE
Included in salable	None
merchandise.	

I have been in peaceful possession of the property covered by the loan application accompanying this statement for .....years and I do not know of any claim adverse to my claim or title, nor of any liens thereon, not above mentioned.

Signed Esquire, Incorporated, By D.

Witness .....

DRAFTING DOCUMENTS
LEASE AGREEMENT

SHEET No. 2

FACTS FOR LANDLORD.

You are ....., Trustee under a deed of trust, and in this capacity you own premises on the south side of Main Street now available for rental. These premises consist of several stores, one of which is occupied by a photographer's outfit. Their lease expires the first of May, and you are looking for a new tenant. A gentleman representing Esquire, Incorporated, telephones you for an appointment, and you make an appointment with your lawyer. The meeting which takes place is attended by the two lawyers and by yourself as landlord and the president of the corporation as tenant. You are interested in working out the details of a lease to cover the situation. In the first place you should have available your blueprints. They will show the location of the premises, size, etc. It will be necessary to have these in order to get a proper description, but you do not offer to show any of these papers unless one of the lawyers asks for them.

You are not anxious to rent for more than five years because you cannot see ahead beyond that period and you do not know what changes may take place in real estate in Durham in that time. You agree, however, to compromise on a ten-year basis. Originally you asked $500 a month rent, but eventually you allow yourself to be beaten down to $300 a month for the first three years; $325 a month for the second three years; and $350 a month for the last four years. For the storeroom $15 a month for the second five years.

You agree to the following things: (1) If the storeroom is destroyed in whole or in part by fire or other casualty the tenant should be relieved from the paying of any rent until the building is repaired. (2) You will not lease any store space in the building to a competing firm. (3) You agree to keep the outside of the place in repair and to pay taxes and insurance against fire and breakage of plate glass. (4) You insist that the tenant shall conform to all local building ordinances, such as the placement of electric signs. (5) The place must not be sublet. (6) You are to be at no expense for repairs made by the tenant. The law student does not see this sheet.

For the Thursday afternoon conference each student in the class should bring (a) a list of questions—legal, ethical, business, or otherwise which occurred to him in connection with the case; (b) his notes on the facts; and (c) an outline of a lease which should satisfy the parties.

The instructor also brings to the meeting two outlines in the following form: Sheet No. 3 indicates some of the problems which

should confront the law student who "represents" the tenant; Sheet No. 4 is a similar analysis of some of the matters about which the landlord's "lawyer" should be thinking. The law students do not see these sheets until the Thursday meeting.

The reader will note that an actual lease is not drawn—merely outlined. Time does not permit the emphasis on "writing." But the instructor may show the students the lease which was used in the actual case.

SHEET No. 3

PLAN OF PROBLEMS CONFRONTING THE ATTORNEY FOR THE TENANT
(The list is illustrative and not inclusive.)

1. *Problems in the Conduct of the Interview:*
   (a) What does my client want from me and from the landlord?
   (b) With whom are we dealing on the opposite side: a layman, a lawyer, a corporation, a partnership?
   (c) What is to be my fee?
   (d) Since we are going to attend a joint conference with the landlord and his lawyer, what preparation should we make for problems of law, etc.? What material should we take with us:
      (1) Financial statements showing the tenant is reliable?
      (2) Recommendation from a bank?
      (3) Recommendation from a chamber of commerce?
      (4) Recommendation from a civic club?
      (5) List of changes and improvements desired?
      (6) List of the items upon which the tenant wants to insist?

2. *An Inventory:*
   (a) What specific property is to be the subject of the discussion?
   (b) Is the title clear?
   (c) Are we dealing with the owner or authorized agent?
   (d) What is the value of this property?
   (e) What is the value of neighboring property?
   (f) What are the future prospects of property values in this area in the next ten years? (The services of a realtor may be required in this connection.)
   (g) What are the prospects for a men's clothing store in this area?

3. *What Issues Should We Raise:*
   (a) What guarantee have we that the title is clear?
   (b) Is my client obtaining all the property he is likely to need in the next ten years?
   (c) In the event that my client is bound to pay rent for ten years is he too much restricted in other respects?

(d) Are there adequate arrangements to protect my client from too much and too close competition?
(e) If the building should burn or otherwise be destroyed or injured, what arrangements can be made?
  (1) Insurance against fire, storm, war, personal injury to persons in and around the building, plate glass, etc.
  (2) Who pays the premiums?
  (3) Agreements on modification of tenant's obligations until building is again in condition.
(f) If building otherwise deteriorates?
  (1) Who is to make repairs?
  (2) What adjustments are to be made in rent and other obligations?
(g) What improvements are to be made; who pays for them; who is to own them?
(h) What privileges may the tenant have with regard to advertising, signs, lights, etc.?
(i) What guarantee is there that fixed charges will be paid, such as taxes and interest on encumbrances? What may tenant do if landlord does not pay?
(j) What are rights of tenant if landlord becomes insolvent or bankrupt?
(k) Will the business of the tenant be affected by any city ordinances, building restrictions, etc.?
(l) Are there any possible municipal assessments?
(m) Are arrangements for heating, lighting, air conditioning, etc., satisfactory?
(n) What can be done in the way of a sprinkler system or other device to provide fire protection?
(o) When will the lease begin; how long will it run; are there to be any clauses allowing recision, or modification during the term?
(p) What rent is payable and how is it to be paid; on what is it based? Is it so many dollars a month? Is it so much for the first year while business is slow and so much more in later years? Is it a flat sum or minimum plus a percentage of the profits?

4. *Form of the Lease Agreement:*
(a) Formal sections—parties, consideration.
(b) Identification of the property and purposes for which it may be used.
(c) Term of the lease and modifications; if any.
(d) Rent; when, where, and how payable.
(e) Provisions for immediate problems like improvements and insurance.
(f) Provisions for future problems like possible bankruptcy of landlord or matters not covered in the lease (a provision for arbitration may be included).

5. *Legal Problems:*
   (a) Has the landlord authority to execute the lease—what evidence of this should he submit?
   (b) How protect tenant against mechanics liens and claims in connection with the improvements?
   (c) Is the title clear?
   (d) How protect the tenant against a possible bankruptcy of the landlord?
   (e) How protect tenant against liability for injuries to customers and others?

SHEET No. 4

PLAN OF PROBLEMS CONFRONTING THE ATTORNEY FOR THE LANDLORD

1. *Problems on the Conduct of the Interview:*
   (a) What does my client want from me and from the tenant?
   (b) With whom are we dealing on the opposite side: a layman, a lawyer, a corporation, a partnership?
   (c) What is to be my fee?
   (d) Since we are going to attend a joint conference with the tenant and his lawyer, what preparation should we make for problems of law, etc.? What material should we take with us:
      (1) Blueprints of the property?
      (2) Title search?
      (3) Statement of financial condition?

2. *An Inventory:*
   (a) What specific property is to be the subject of the discussion?
   (b) What is this property worth to me? basis for value?
   (c) What is similar property in the neighborhood worth?
   (d) What are the future prospects of property values in this area in the next ten years?
   (e) What is the financial condition of the tenant?
   (f) Previous rental value?

3. *What Issues Should We Raise:*
   (a) For what items is the landlord to be liable? Repairs and, if so, what repairs? Improvements? Payment of carrying charges?
   (b) What rent shall be paid and how and when? (The landlord will probably want to work out alternative proposals as a basis for rent.)
   (c) When does term begin and end? Is it subject to modification or renunciation during the period? If so, for what reasons?
   (d) If tenant should become insolvent or bankrupt what rights has the landlord? How protect him?
   (e) What protection against fire will be required?
   (f) If there is a fire, who shall have what duties? What about the rent? What about insurance?

(g) If building deteriorates for other reasons, who shall have what duties?
(h) The right to enter and make repairs?
(i) Rights in the event tenant does not comply with the terms of the lease?
(j) Agreement with regard to improvements and to whom they shall belong?
(k) Protection against subletting?
(l) Limitation of purposes for which premises are to be used?

4. *Form of the Lease Agreement:*
(a) Formal sections.
(b) Identification of the property and purposes for which it is to be used.
(c) Term of the lease and modifications, if any.
(d) Rent, when, where, and how payable.
(e) Provisions for immediate problems like improvements and insurance.
(f) Provisions for future problems like possible bankruptcy of tenant and matters not covered in the lease.

5. *Legal Problems:*
(a) Has the tenant or his agent authority to execute the lease? What evidence of that authority do we need?
(b) How protect landlord against claims in case of damage, fire, bankruptcy of tenant?
(c) How protect landlord against injuries to customers and others.
(d) What claim shall landlord have to tenant's property in the premises or if he attempts improperly to receive it?

A word should be said distinguishing our method of procedure. We are not interested in a "trial." That is a matter for the Practice Court. Our concern is with a human problem to be solved by a lawyer through the medium of conciliation. In the course of that solution the lawyer must make a variety of decisions. We believe that it is possible to teach a thinking process by exposing the students to a series of "slow motion" exercises in which these decisions will have to be made. Since, in real cases, the events ordinarily move past too quickly for pedagogical purposes, we have devised something which approximates, as nearly as we can make it, the real experience.

While the procedure is informal, it is definitely controlled, and the presence of the instructor keeps matters from getting out of hand. The events are supposed to occur in a law office and not in a courtroom. The "clients" are selected and instructed by the staff; so there is no occasion for "counsel" to persuade them to vary the stories as-

signed to them. The interview is frequently interrupted by the instructor and occasionally by the students to raise questions or to point out some topic of importance. The student who acts as interviewer is kept quite busy.

EXERCISES IN INTERPROFESSIONAL CO-OPERATION

Perhaps the most interesting portions of the Legal Aid Clinic course are the exercises in interprofessional co-operation. Here with the aid of other departments of Duke University—the Medical School, the Forestry School, the Engineering College, the Accounting Department, the Divinity School—we seek to inform the law students regarding the difficulties of using material and resources from other professional fields for the solution of client's problems. This process combines certain factors of conciliation with the details of having two professions combine to solve the problems of a client. Since the co-operating departments desire to have their students obtain experience as expert witnesses, the exercises are cast in the form of mock trials. But, as will hereinafter appear, this form is incidental to the major object. There are few more difficult tasks for the young lawyer than to explain to the average jury the issues in a case in which the witnesses tend exclusively to use technical terms. The student who has learned the art of translating concepts from the professional to the lay level of thinking has achieved much. It is our experience that three of these exercises, in a single year, allow for increasing interest and experience by members of the class. If more are attempted, the novelty wears off.

The objectives include the following: (1) promoting an understanding of the technique of interprofessional co-operation in a case in which the interests of the client are to be served, not only by the resources of the legal field, but also by skills, techniques, discoveries in professional areas like medicine, engineering, and accounting; (2) familiarizing the student with the existence of, and the method of using, nonlegal materials in solving human problems according to law; (3) emphasizing the importance of an adequate marshaling of facts and materials which are to be used to persuade someone else in or out of court.

The work differs materially from the ordinary practice court procedure. An agreed set of facts takes the place of pleadings. The issues are stipulated out of the field of law and are limited to one or two questions of fact or theory upon which experts from the co-operating profession may disagree. The expert witnesses are students

from the co-operating department, who, under the eyes of their fellow students, are reluctant to give unrestrained evidence or to depart from a position which they can justify. The exercise is not designed to teach trial tactics or procedural law. It is an experiment in the collection, marshaling, interpretation, and use by client-serving lawyers of facts gathered from other professional fields. Can they be made clear to the layman?

THE MENTAL PROCESS

The mental process may be described as follows:

(1) The given set of facts, presenting an arguable issue in the co-operating field, is suggested, examined, and revised so that legal and procedural problems are eliminated and only one or two factual questions remain. Thus a single exercise is kept from consuming too much time. An hour and a half seems justifiable but not much more.

(2) The law students on each side of the case become thoroughly familiar with their respective experts and with the issues as they appear in the co-operating field.

(3) The law students are required to plan a campaign at law for the presentation of their respective sides of the case, thus developing imagination, resourcefulness, accuracy, persuasiveness, and other desirable characteristics of a lawyer.

(4) The actual presentation of issues brings out the ability of the student to perform acceptably in public. All along the way decisions must be made.

The previously described exercise in preparing a client for a conciliation meeting is something of an introduction to this work. The stages are as follows: first, a series of conferences between members of the Legal Aid Clinic staff and faculty members from the co-operating schools; second, a series of conferences between Legal Aid Clinic students who are to appear as counsel and the students from the co-operating departments who are to appear as witnesses; third, a series of conferences between Legal Aid Clinic students and Legal Aid Clinic staff to solve some of the problems involved in direct examination. In addition, the Legal Aid Clinic students, on both sides of the case, confer to arrive at the stipulated facts on which the trial is to proceed.

The planning involved in preparing such an exercise follows this routine:

(1) A set of facts is solicited (for example, from the Medical School). This exercise usually turns out to be based upon a real case

in which one of the faculty members of the co-operating school already has appeared in court as an expert witness.

(2) Law students and medical students are selected as counsel and witnesses.

(3) A series of conferences results in a carefully planned stipulated set of facts in which because of a deliberate effort at balancing, each side will have a chance to make a reasonable showing.

(4) The law students then toss a coin to decide who shall be for the plaintiff and who for the defendant. A determination of this point prior to an acceptance of the "facts" would encourage too much subsequent argument. Future changes in facts are only by written stipulation. This arrangement avoids tedious wrangling in the proceeding and prevents each side from presenting its own version of the facts.

(5) A series of conferences then takes place between the law students on each side and their witnesses. This is perhaps the most valuable part of the exercises. Here the law student, in the process of preparation, gains an insight into the resources and methods of thinking in a neighboring professional field. The co-operating students learn something about the functions of an expert witness. Both groups learn tolerance of those who have been trained according to different discipline from themselves. Various stages of this progress toward interprofessional understanding may be indicated: (a) When each group of students is endeavoring to understand the technical language and concepts of the other. (b) When local pride in one's own field gradually gives place to a wider understanding that both groups are serving the public to the best of their ability. (c) Co-operation between lawyer and witness where the competitive spirit on each side prepares for the coming conflict. (d) A recognition of the need for translating technical professional language, legal or otherwise, so that laymen can understand it.

(6) The preparation of the direct examination. That law students are required to make this preparation in writing and submit it to the instructor in advance of the trial makes necessary a careful evaluation of questions. It is possible to eliminate many which would be objectionable or to cast them in a more acceptable form. It is also possible to suggest to the student citations of cases which rule upon the manner of presenting certain types of evidence.

(7) The classroom or laboratory part of the exercise. A practicing lawyer serves as "judge." A jury of six law students and six students from the co-operating school is selected. If it were possible to secure

a jury of lay persons, the results would probably be more satisfactory. As matters stand, the "court" requests the jury to view the case impartially so that the law students will not all vote one way and the others oppose them. The results indicate that the jury votes without regard to its professional affiliations.

Visitors are welcome. A statement concerning the purpose of the exercise is made to law students, co-operating students, and visitors. A timetable is arranged—perhaps 5 minutes for opening, 15 minutes for direct-examination, 25 minutes for cross-examination, and 5 minutes for closing—for each side. The jury is allowed time for one ballot. A majority vote suffices. The audience also votes, frequently in opposition to the jury.

(8) At the conclusion of the exercise a brief statement of the circumstances surrounding the real case is made by the instructor from the co-operating school.

(9) The succeeding Thursday afternoon session centers upon the student reactions to the manner of conducting the trial and the courtroom demeanor of the law students.

The significance of this exercise may be more obvious in future years. If the young lawyers in each community readily join together with representatives of other professional groups as social engineers in a council of professional groups, much public benefit may be expected. The following is an illustration of such a case.

The case was presented on April 14, 1941. The stipulated facts of the case as agreed upon by the attorneys and their expert witnesses, who were medical students:

Statement of Case

Plaintiff was admitted to defendant hospital during the evening of July 25, 1939. At approximately 9:00 A.M. on August 2, 1939, an appendectomy was performed upon plaintiff. During the evening of the day of the operation at approximately 6:30 P.M. plaintiff requested a nurse on the ward to give her something to produce sleep. Pursuant to said request the nurse gave her a tablet or pill. About noon the following day (August 3) plaintiff became violently nauseated, and was seized with intense abdominal pain and headaches followed by convulsions which occurred at approximately 30-minute intervals. On the following day (August 4) plaintiff became unconscious for several hours and thereafter suffered intermittent lapses of consciousness.

Since the fifth day of August, 1939, plaintiff's blood pressure has been extremely high, and on the fifteenth day of August she suffered partial paralysis on the left side of her face. Plaintiff was discharged from the hospital on September 18, 1939.

Plaintiff contends that her condition is due to mercurial poisoning caused by an administration of mercury or some drug containing mercury through the negligence of the defendant.

ADDITIONAL EXERCISES IN CONCILIATION

During the past year two additional exercises in conciliation occupied the attention of the Duke Legal Aid Clinic staff. They are examples of situations; one where a conciliator, or arbitrator, is present; and the other where no such mediator is available. These exercises are still in the experimental phase.

I. In co-operation with students of the Divinity School an exercise was carried out where an appeal to the pardoning power was the point of departure. The objectives were to emphasize conciliation, to show how such a process may be handled when a conciliator is present, to give both groups of students some familiarity with the process of executive clemency, and to facilitate co-operative endeavor by men trained according to different professional disciplines. The mental process again involved a series of decisions. What points should be presented; what is the most persuasive method of presenting them; what material beside oral argument should be employed?

The method was as follows:

(1) The stenographic record of a murder trial was selected. It was assumed that this same case was now before the State Parole Commission. In the actual case selected, the accused had been denied executive clemency. Perhaps another time it would provide a more interesting case and a more even balance between the two sides to take a situation where clemency had been exercised in favor of the accused.

(2) The following material was made available to the Law School students: (a) the stenographic record in the trial court, (b) the opinion of the Appellate Court, and (c) selected material from the files of the State Parole Commissioner.

(3) The issue was stipulated so as to conserve time. This particular exercise was designed to bring out a discussion of capital punishment.

(4) Two Law School students were assigned as counsel, and each had one witness—a Divinity School student.

(5) At the hearing a "commission" was selected with three Law School students and three Divinity School students. A member of the Legal Aid Clinic staff presided.

(6) The mechanics of direct- and cross-examination were included for the benefit of the witnesses.

(7) At the conclusion of the exercise the commission voted.

The topic "capital punishment" led the discussion into a direction which, while interesting enough in itself, tended to a debate rather than the presentation of legal arguments. Perhaps a different topic should be tried the next time. The material from the Parole Commissioner's file was particularly valuable. The Legal Aid Clinic staff felt that the exercises should be repeated.

II. An exercise leading to a composition agreement of creditors also was tried effectively. This conciliation was effected without a presiding conciliator. A member of the Clinic staff appeared as counsel for a hypothetical debtor. Five law students each represented a different creditor with a different set of claims. The plan was to see if some agreement could be reached. The major staff problem was to provide in advance for a variety of claims, each of which depended for its legal success upon a theory different from the others.

The objectives were to emphasize conciliation; to show how such a process might be handled without a conciliator; to give the students some experience in dealing with a complicated problem with various solutions, one of which, eventually selected, would win out only after the group was convinced that it was the most fair and reasonable; to dispose of individual efforts to obtain an advantage.

The mental process emphasized the evaluation of one's own claim as against competing demands. A good knowledge of the substantive and procedural law was a prerequisite.

The method was as follows:

1. A case was selected in which a member of the staff had participated. The facts were then modified. A debtor had hired a contractor to build a house. The contractor had received a substantial amount of money, and had not paid all the claims and had disappeared. The only recourse was against the debtor. The debtor did not have sufficient money to pay his creditors in full. Some of the creditors had preferred claims. Others had not. In order to perfect some of the claims, as in the case of mechanics liens, certain legal steps had to be taken. In some instances they had not been taken. Each claim had a different legal background.

2. Each student participant was given a single claim and information about its present legal status. Time was given so that each student in advance of the hearing might investigate the law, thus obtaining some idea of the legal strength of the other claimants, but

each student was requested not to discuss his claim with the other students prior to the meeting. This lack of discussion introduced the element of surprise. The exercise also deserves to be repeated.

SCHEDULE OF CLASSROOM EXERCISES IN THE SECOND SEMESTER

1st Monday—an exercise in the conciliation process where a mediator is present.

2d Monday—an exercise in the conciliation process where no mediator is present.

3d Monday—an exercise in the organization of material for presentation by a witness at a conciliation proceeding.

4th Monday—another exercise in the organization of material for presentation by a witness at a conciliation meeting.

5th Monday—an exercise in drafting a legal document which only one person is to sign, such as a will, a release, an affidavit, a deed, a mortgage.

6th Monday—an exercise in drafting a legal document which two or more people are to sign, such as a contract, a lease, a compromise settlement.

7th Monday—an exercise in drafting a legal document to meet a situation in which some practical, business, or ethical difficulty is to be solved before the document can be drawn.

8th Monday—an exercise in drafting a document where several possible documents might meet the situation but in which a preliminary decision must be made concerning the type of document which will best satisfy the needs of the client.

9th Monday—an exercise in interprofessional co-operation.

10th Monday—another exercise in interprofessional co-operation.

11th Monday—another exercise in interprofessional co-operation.

12th Monday—an exercise in charging fees. The classroom work is concluded a little early in the semester so that the students may have a chance to complete their active cases, appellate briefs, and clinical examinations before the regular final examinations begin.

CHAPTER IV

BRIEFING WORK AND THE PREPARATION OF CASES FOR TRIAL

Briefing Work

IN Chapter II, in the discussion of the plan of campaign, mention is made of the step at which the facts as presented by the client are analyzed to determine the theory or theories of law involved. We described the mental process involved as a "translation" or as a legal "diagnosis." The material in the present chapter indicates how we are helping the student to develop his thinking along this line so that he may answer the question: "What is the law applicable to the solution of the client's case?" Naturally this phase of the work may be described in terms of the thinking involved in the preparation of a memorandum of law or a brief.

The nature and extent of the instruction in briefing given in the Duke Legal Aid Clinic has varied somewhat during the years, depending upon the other courses offered from time to time in the Law School. During the whole decade the first-year students have had a one-semester course in Legal Bibliography designed to introduce them to the use of law books and give them some experience in finding the law. For a number of years a second-year course in Brief Writing was given. In one year additional exercises were given the first-year men in Legal Writing and Moot Court Argumentation. Except for this training, the briefing work has been largely a responsibility of the Legal Aid Clinic.

THE OBJECTIVE

The objectives of the Legal Aid Clinic exercises in briefing lie in the field of form. Students should acquire experience and facility in the mental processes which are expected of lawyers by the courts, by clients, and by the public, when they are called upon to express themselves persuasively either by written or oral argument. In addition, they should have some familiarity with accepted legal forms. That they may learn some law in the course of their Legal Aid Clinic work is merely an incidental advantage.

THE MENTAL PROCESS

We have assumed that irrespective of the form in which the material is cast, the lawyer in writing a brief, or arguing a point of law, goes through a routine, the main stages of which are largely the same in every case. Up to the present time our efforts to analyze this process are indicated by the following:

(a) The preliminary step, as described in Chapter II, may be labeled *analysis*. In it the law student is expected to gather the necessary facts, to translate the client's problems into the field of legal thought, and to explore thoroughly the pertinent theories of law. The objective is to ascertain all the significant theories of law that may have to do with the problem submitted by the client. It is at this point that we find the greatest difficulty confronting the students. Their practice of working on problems in law school courses, each appropriately designated in catalogue and casebook, has given them the tendency to fasten their attention upon the first important question of law that comes to mind. Just how to develop their imagination so that they may feel impelled to do the necessary methodical pioneering to unearth all other significant questions is a problem for which we do not yet see a definite solution. At the conclusion of this step the student should be ready to walk into a law library and begin work upon a series of legal questions.

(b) The second stage may be labeled *research*. We assume that the student, by the time he comes to the Legal Aid Clinic, knows how to find the law on a given question; but we are concerned here with collecting: first, all the authorities on the precise subject; and second, the most recent authorities on the subject. Students who have become accustomed to studying by the casebook method, in spite of instructions repeated in every course, frequently have difficulty in actual casework in realizing the need to look for statutory material, municipal ordinances, administrative rulings, and other data, besides case law, which may have a distinct bearing upon the solution. Again, students need to be encouraged to pursue their investigation of each authority so as to know whether the statute cited by him is the last word on the subject and whether the appellate court may at this very moment be engaged in writing an opinion which will affect the law in the instant case.

(c) The third stage we have labeled *evaluation*. Starting with the large collection of authorities gathered under the second step, we consider it good practice to eliminate: first, those which upon more

mature consideration turn out not to be in point; then, those older authorities which have been superseded by more recent material. In the course of this work the student frequently comes across authorities which are only partly in point. These may be put in a special category. If they are the best available material, the student will use them as a basis for arguing by analogy. On the other hand, if there are authorities directly in point, there seems less reason to include those only partly in point.

Another part of this stage in the process involves a careful examination of the authorities opposed to the position which the law student is taking. He can hardly hope to do justice to his side of the case unless he knows the strength and weakness of the law on the other side. Necessarily involved, also, is a process of distinguishing, if possible, these unfavorable decisions. At the conclusion of this stage of the process the student should have all last-minute pertinent material.

(d) The fourth step we have labeled *marshaling*. It begins with the assembling and arrangement of this residue of material in logical form. Naturally this step cannot be completed at the first writing, and much effort is spent in encouraging the student to work out a continuity of thought and a series of transitions so that the points of argument may follow one another smoothly in persuasive order. In the appellate brief, the student is required to consult local rules of court. Finally, some attention is given to the person or persons to whom the brief is to be submitted so that it may be made persuasive to him or them. A lawyer has an opportunity to display resourcefulness, imagination, choice of language in presenting his case in a fashion to win support from the majority of the judges of a court where each incumbent may have a different point of view. The object of this last stage is to do a sound professional, workmanlike job for the client.

(e) There is still a fifth stage which may be labeled *argumentation*. It involves moot court exercises and will be described later in this chapter.

METHOD

This mental process is presented to the students in a series of four exercises which are called as follows: the preliminary memorandum, moot court arguments, trial brief, and appellate brief. The first three take place in the first semester; the fourth, in the spring. Instruction is given on an individual rather than a class basis. The class is as-

sembled at the time each new briefing assignment is handed out; but thereafter, since all the problems are different, each student tends to work by himself, conferring frequently with members of the staff.

The Preliminary Memorandum

The immediate purpose of this memorandum of law is to introduce the student to the mental process by confronting him with a legal problem that is not too difficult to prevent him from realizing the various stages of thought through which he is going. As he works it out, the particular document may be in the form of an office memorandum, an opinion of law to be given to a client, an opinion to aid a judge, or an informal collection of authorities submitted to a trial court. Material is readily available in the closed files of the Legal Aid Clinic, and, if it were not, it would be a simple matter to secure all necessary data from former Legal Aid Clinic students.

A variety of experiments has been made in the matter of orienting or perhaps reorienting the student to the work. Lack of time has prevented us from working them out more elaborately. It is desirable, however, to mention them. At one time the class was handed a series of sets of facts and instructed that their entire responsibility was to set down a list of all questions of law that they saw involved. Their written answers were then the subject of conferences between instructor and student. At another time the students were handed specific legal problems and were required to bring to the instructor the most recent case in a given jurisdiction directly on the point. At still another time a group of authorities were furnished the students, all having some bearing on a question of law. The students were instructed to evaluate them under four headings, indicating those which were not in point, those partly in point, and those directly in point, whether for or against the particular proposition.

A perplexing administrative question is whether to give the student a problem which has previously been worked over by some staff member or other student, or to take a completely new item. The new items have freshness, but with respect to the old, we know their quality as clinical material and have some idea how long it ought to take the student to work them out. Unless the different problems handed to the respective members of the class are reasonably comparable, the task of grading is greatly increased. Thus far the staff has come to no definite conclusion concerning which type is the better.

The Moot Court Argument

This exercise is similar to the one which precedes it, but more complicated. A problem of law is assigned to two students. Each of them is required to prepare two memoranda, one on each side of the case. This assignment encourages the student to keep his mind flexible on all points rather than to allow it to become so much involved in advocating one side that he is unable to see clearly the other.

Sometime after the memoranda are prepared, but before the argument, the students toss a coin to determine which side of the case each is to present. Thereafter, each spends some time on the matter of argument as contrasted with the writing of a brief. In general, the staff feels that an important value of oral argument is to interest the court in reading carefully the written brief. Therefore, a mere rehearsing of the points contained in the brief seems inadequate.

The following stages of the argumentation process deserve comment.

1. Concise bird's-eye-view of the facts of the case
2. Clear statement of the issues
3. Statement of the major contentions of the parties, supported in each instance by brief references to facts and authorities
4. Statement of what the lawyer wants to persuade the court to do.

Discussions between student and staff member before and after the argument help to organize thinking along these lines, but again time is all too short.

The actual moot court session is similar to such exercises held elsewhere. The judges are former students rather than faculty members. The law student is thus encouraged to develop an argument persuasive to a man who, while familiar with law in general, may not have any special experience with the particular question of law involved in the case.

The Trial Brief

In the early autumn one of the members of the staff contacts the leading trial attorneys in Durham and invites them to submit interesting pending cases for trial briefs. These cases will be enough to supply one for each student. Local attorneys are selected because of the value in having the student confer directly with them and because the student, if possible, should have a chance to attend the trial itself. The cases submitted are scrutinized by the staff to determine whether they contain an interesting question and how much time is available to the student for the preparation of his brief. Experience

indicates that unless the student has from thirty to sixty days leeway, he is not able to turn out a satisfactory piece of work and still carry the load prescribed in his other law school courses. To allow any course to consume more than its proper share of time is unfair to the student and may even amount to exploitation. It is purely an administrative matter to arrange for suitable time for the work.

The staff member secures copies of the pleadings, and the student first studies them. Next, the student and the staff member visit the attorney's office for a preliminary conference on the theory of the case and the available evidence. In a number of cases the student meets the client and the witnesses, but as yet no way has been found to make this opportunity available in every instance. Even so, the student comes as close to them as many a young lawyer briefing cases in the secluded library of a large law office. The student then has a conference with the staff member and begins the research for the necessary authorities. From time to time further conferences are held with the staff member and the attorney, and slowly the trial brief emerges. When it is delivered to the lawyer, the student's labor is usually at an end, but frequently he is invited to sit at the counsel table during the trial and occasionally discusses various issues with the attorneys. Subsequently, the staff member confers with him on any points which the student may not understand. It should be emphasized that one of the most important aspects of the work is the personal contact between student and instructor at every stage of the exercise. This contact results in better acquaintance by the student with the problem and better understanding of the student by the Clinic staff. The following form is suggested as a guide for Clinic students:

FORM OF A TRIAL BRIEF

I. Index

The index should refer to all main divisions and subdivisions of the brief. It should also contain a table of authorities cited in the brief.

II. Statement of Facts

This statement should be a brief account of the material facts in the case and especially those which are in dispute.

III. Abstract of the Pleadings

Only the substance of each allegation in the complaint and the corresponding allegation in the answer should be set forth. It is advisable that the abstract of both complaint and answer be set forth on the same page. For example:

Complaint	*Answer*
1. Plaintiff a resident of Durham County.	Admitted
2. Defendant owned and operated auto sales agency in city of Durham and employed AB as salesman.	Admitted
3. Duty of AB to solicit purchasers and demonstrate cars and invite people generally to ride in cars.	Admits duty to solicit purchasers. Denies authority to invite people generally to ride.

A third column might be added by the student while abstracting the pleadings in which the points of law raised by each allegation of the complaint and answer could be set out. A casual study of the facts may reveal the main problems of law involved, but only by a careful analysis will the student see the underlying or subordinate problems of law upon which the answers to the main problems depend. Therefore, in an abstract of a pleading each allegation should be carefully analyzed to determine whether a legal problem should be noted. This method is also a timesaving device. A careful analysis of each allegation at the time that the abstract of the pleadings is made will in most cases avoid the necessity of further study of the pleadings.

IV. Amendments to Pleadings

If, for any reason, it should appear advisable to amend the pleadings, then the proposed amendments should be drafted and incorporated in the brief.

V. Plaintiff's Proof

If the trial brief is for plaintiff's attorney, a diagram of proof of plaintiff's case should be made; if for defendant's attorney, of defendant's case. This diagram should indicate all the evidence to be introduced; the names of the witnesses to prove a particular fact; documents to be introduced and, if recorded, reference to book and page where document is recorded; also, name of witness to identify document. For example:

> John Brown, Plaintiff, purchased a new 1938 model B. automobile from the defendant on June 1, 1938. Defendant warranted the car to be free from defects in materials and workmanship. On August 1, 1938, the car and the garage in which it was stored were destroyed by fire. Plaintiff claims that the fire was caused by defects in the car which were present at the time of purchase, and sues defendant to recover the purchase price and for loss of his garage. Defendant contends that there were no defects and that

fire came from some other source. That there was a grass fire near plaintiff's garage on the same day.

(Note) The above facts are set out only as basis for the following diagram; otherwise the facts would appear at the beginning of the brief.

DIAGRAM OF PROOF

Facts to be proved	*Witness*	*Documents*	*Pleadings*
1. Plaintiff purchased new B. from defendant on 6-1-38 for sum of $1,050. Car had been driven 2,000 miles, no accidents, and was in good condition.	John Brown (6)*		Admitted in answer
2. Car destroyed by fire 8-1-38.	John Brown		Admitted in answer
3. Car was warranted against defects in material and workmanship by defendant.	John Brown	Certificate of warranty	
4. Fire was due to defective wiring.			
a. Six fully charged batteries were installed in car within two months.	Jim Smith (7) (Smith's battery station)		
b. This would indicate short circuit which in their opinion caused fire.	Sam Jones (8) (expert) John Doe (9) (expert)		
5. Grass fire did not cause fire to car and garage.			
a. Only small fire and completely extinguished by fire department six hours before garage and car burned.	Sam Green (10) (neighbor who helped extinguish it) Red Brown (11) Jim Black (12)		
b. Fire started inside garage.	Fire Chief Gray (13)	Report made by Fire Chief	
6. Value of car at time of fire.	Joe Mechanic (14)		
7. Value of garage at time of fire.	Tom Contractor (15)		

* Numbers refer to pages of brief on which statements of witnesses appear.

VI. Defendant's Probable Proof

Not in diagram form unless representing defendant. All facts known which will probably be used by your adversary should be noted together with name of witness. A lawyer should be as familiar with his adversary's side of the case as his own. All facts known about the witness should be indicated. This should help the attorney who cross-examines the witness. Sometimes the plaintiff's counsel can anticipate a certain method of proof of a particular fact. If certain rules of evi-

dence forbid this method of proof, an objection and the reasons supporting the objection should be noted. If an attorney has a list of facts which his adversary must prove to win his case, he is interested in seeing that only legally competent evidence is presented. By listing your opponent's facts you can frequently know how far to go on cross-examination after his witness has testified.

VII. Digest of Evidence

A. For Plaintiff

1. Statements of witnesses
2. Documents to be introduced
3. Reference to other documents

B. For Defendant

If representing defendant, same form should be used.

Statements of witnesses should be set out in the order in which testimony is to be presented. Statements received from witnesses before trial should be copied and the copies placed in the brief. If the statement was signed by the witness, this fact should be noted on the copy. Reference to particular documents which each witness is to identify should be made.

VIII. General Law of the Case

No trial brief is complete which does not indicate all the law upon the various points of the case, in support of both the plaintiff's case and the defense. Remember there are two sides to every case. Some definite form should be followed in preparing this part of the brief. The main points involved in the case should be listed and, under each, a systematic arrangement of decisions bearing on that point. A brief statement from every decision should be included, and parts of the decision which are directly in point should be extracted. Citations covering any procedural point that might arise and citations in support of or against the admissibility of certain evidence should be included. If one or more statutes are involved, the substance of the statutes should be given.

IX. Special Instructions

In some jurisdictions, where special instructions to the jury are requested, it is necessary to submit them in written form to the judge before argument of counsel begins, unless permission is given by the judge to extend the time. They must be submitted before the charge to the jury is given if the judge is under no obligation to consider them at a later time. The instruction to be requested should be prepared in proper form in advance of the trial. A copy should be made for the judge.

X. Issues for Jury

It is customary in North Carolina for the trial judge to call for the issues to be submitted to the jury at the beginning of the trial. The attorneys for plaintiff and defendant present what each considers the proper issues. The issues are finally determined by the judge. The issues should be clear and concise and not in such form as to confuse the jury.

XI. Jurors

It is advisable to go over the jury list with your client before the trial, and to include in the trial brief a list of the jurors, indicating those jurors not considered desirable and the basis for challenges that might be made.

XII. Typing

In typing a trial brief always begin each part of the brief on a new sheet of paper. Do not staple the brief together; use clips. This will enable the attorney to extract certain parts of it as each is used. Be sure that the index covers everything in the brief so that any point covered in the brief can be quickly located.

Whenever possible, an effort is made to put the law student directly in touch with the witnesses so that he may have a clear picture of the lawyer's mental process. Whenever possible, the student is also encouraged to attend the actual trial of the case. The Legal Aid Clinic staff feels that this particular exercise is very helpful in emphasizing the importance of an orderly mental process in the preparation of a case.

The Appellate Brief

Each student in the Duke Legal Aid Clinic course is required to write at least one appellate brief. This task is usually performed during the second semester.

Reason for Devoting Clinic Time to Writing Appellate Briefs. The orthodox briefing course in law school trains the students in the general theory of writing appellate briefs, emphasizes the technique of looking up points of law, crystallizes their thinking in the matter of form, and in general points out to them how the argument should be made. Because of limitations of time and other reasons, in these courses the law student usually writes his brief for the instructor only, and need go no further than to satisfy him. In writing a brief in the Clinic course, the student must satisfy, first, the staff members; second, the lawyer for whom the brief is prepared; and third, the judge or judges of the appellate court in which the appeal is to be heard.

There are two unique features of this phase of briefing work done under clinical conditions. The first is the contact made by students and Clinic staff members with lawyers in active practice. The second is the opportunity offered the student to write a brief under conditions peculiar to his own particular jurisdiction.

What Students Should Expect to Learn. The student who writes an appellate brief in the Clinic course should expect to learn certain specific things:

1. Sensitiveness to those factors, of a case in motion, which are not present under any other conditions
2. Rules of practice on appeal in his own state
3. Rules of court covering brief writing in his own state
4. Standards of the practicing lawyer and the judge with respect to brief writing.

Rules and Procedure. During January of each year the student is required to secure from some lawyer in his home town or the town in which he plans to practice, an assignment for an appellate brief. The home-town lawyer is selected so that the student may become familiar with the rules of court and the procedure of writing a brief in the jurisdiction in which he proposes to practice. The contact also enables him to secure an opinion from a lawyer in active practice about the quality of his work. This relationship is stimulating. Frequently the student has some tentative arrangement with the lawyer looking toward placement in the office during the ensuing year. The brief is valuable as showing the lawyer whether the student possesses the proper equipment. Even if no relationship is proposed, it is desirable for the student to have some leading attorney in his home town who can give a matured opinion regarding his ability. A timely word may mean the difference between securing or failing to secure a position somewhere else. Under ordinary circumstances, cases are not accepted unless the student is allowed at least thirty days for preparation of the brief.

The following material has been designed to assist the students in the preparation of their appellate briefs.

Initial Steps: In forwarding the case, the attorney usually sends the necessary material. If he does not, the student must obtain from him the "case on appeal" (abstract of record or transcript of record). The date upon which the finished brief must be in the hands of the attorney, should be definitely ascertained and entered on the docket card.

First Draft: After a case has been assigned, the student should study the record thoroughly before beginning the brief. As soon thereafter as possible he should submit a rough draft of the brief to a staff member for criticism.

Early Considerations: An acceptable appellate brief should be good, not only in substance, but also in form. A good argument concealed in a collection of authorities assembled in a careless manner and in a jumbled condition will be unconvincing and may build an unconscious reluctance in the mind of the judge. This carelessness is an imposition upon the court and is negligence toward the client.

Rules of Court: Rules of court generally specify the form which the brief must take. The student is urged not to obtain "special" instructions, from the attorney for whom he is working, about the form of the brief, if the instructions require a deviation from the form prescribed by rules of court. This attorney may have won cases previously, probably not because of the deviation from rules, but rather in spite of it.

The rules of the Supreme Court of North Carolina are to be found in the state reports (221 N. C. 562-3) and in *General Statutes* (Appendix 1, Sections 27, 27½, 28, and 29). Students preparing briefs for courts of other states must consult rules of the court in which the brief is to be filed. Care should be taken to see that these rules are followed. Many appeals are dismissed and cases lost in appellate courts because of a failure of the counsel to follow the rules.

FORM OF APPELLANT'S BRIEF

Formal Data

The first page of the brief should contain formal data of the case; i.e., case number, district from which case comes, name of appellate court, title of case, and party whose brief it is (appellant's or appellee's).

Question Involved

On the first page, also, should be a statement of the questions involved. This should be a succinct statement of what the court is called upon to decide. In every case the main question which the appellate court must decide is whether the judgment of the lower court should be affirmed or reversed, or whether the case should be remanded. Obviously, then, the question involved should not be stated in that form; however, the underlying question or questions, which the court must decide in order to determine the main question, should be noted. This should not contain a statement of the entire case but should be framed in such manner that the court will be able, at once, to see the issues involved and the questions to be decided.

Preliminary Statement

At the outset the court should be advised about the nature of the proceedings, the nature of the action, and what happened in the court below. The following form is suggested:

Appeal by plaintiff from judgment of the Superior Court of Durham County, North Carolina, for defendant, entered upon a motion for nonsuit at the close of plaintiff's evidence.

This was an action to recover damages for personal injuries alleged to have been sustained by plaintiff as a result of being struck by an automobile owned and operated by defendant.

Some statement regarding the nature of the defense should follow, for example:

The defendant denies the allegations of negligence and pleads contributory negligence on the part of the plaintiff. At the close of plaintiff's evidence, defendant moved to dismiss the action and for judgment as of nonsuit. Motion allowed. Judgment dismissing action entered, and plaintiff appealed to the Supreme Court.

With such a brief statement as this the court is now advised what are the questions to be decided, the nature of the proceedings, the nature of the action and what happened in the court below; and is now ready to proceed to study the facts in the case.

Statement of Facts

The facts should be briefly, clearly, and accurately set out in as interesting a manner as possible. The statement should not be a statement of the evidence. Only the essential and material facts should be stated. A great mass of irrelevant facts only obscures the main facts in the case and leads to confusion. The statement of facts should never be argumentative. Any argument about the facts should be left to that part of the brief. Neither should an attempt be made to leave out facts which tend to support the other side of the case.

Before beginning to write the brief, the student should study the record or statement of the case on appeal until he knows all the facts. Then through a process of condensation and revision, irrelevant facts can be eliminated. In most cases a clear, informative statement of facts cannot be assembled without a number of revisions.

A great deal can be learned with respect to stating the facts of a case by comparing the statements of facts in the opinion of an appellate court and the statement of facts appearing in the briefs filed in the case. Judges of appellate courts, through experience, have learned to cut out irrelevant and immaterial facts and to state only those facts which are essential to a determination of the controversy.

Most appellate courts require that a statement of facts be supported by page references to the record. Extreme care should be taken to see that these references are accurately made.

Specification of Assignments of Errors

The specification or assignment of errors should be given considerable thought. During the trial of a case, numerous objections are made and exceptions taken to the ruling of the trial judge on motions, introduction of evidence, etc., any or all of which might be urged as basis for a new trial. In most cases a further study of the record and of the authorities will reveal the wisdom of abandoning some of the assignments of error either because they are not tenable or because they are of minor importance. Some lawyers attempt to argue every assignment of error set out in the record. Others prefer to abandon those which appear of least importance, feeling that the attempt to maintain them might weaken the points which are of major importance. The better practice is not to attempt arguments that appear frivolous, but to urge as grounds for reversal only those assignments of error upon which the case will be decided. Do not assign as error that which clearly appears as not error.

In most jurisdictions the rule prevails that exceptions which are set out in the record and not set out in appellant's brief or in support of which no argument is made, are deemed abandoned.

Argument

The argument should not be a rambling discussion of the facts in the case with occasional citation of authority, but should be a well-organized discussion of the principles involved in the case, supported by authorities which are in point. Brevity and restraint should be practiced at all times. Repetition of argument should always be avoided.

Where a number of points are involved, it is well to set out a list of the points which are to be discussed at the beginning of the argument. Then each point should be set out separately followed by a discussion of that point with relation to the facts, and the authorities. If a point presents subordinate points, the subordinate points should be listed in order and discussed.

If point is made to the admission or exclusion of certain evidence, reference should be made to the witness, the questions or answers objected to, and the ruling of the trial court. In case of objections to instructions, the specific instructions objected to and in case of requests for special instructions, the actual language of the instructions requested should be set out. Do not simply refer to the page of the record where the evidence or the charge of the court appears and require the judge to return to the record to determine just what has been objected to. Briefs which merely state, "Exception No. 1 (R. p. 10). This question and answer are incompetent," afford no assistance whatever to the court.

Citation of Cases and Statutes

In the use and citation of cases and statutes, extreme care should be taken. Often cases are cited for a proposition which they do not support. Often cases are cited which have been later overruled. No case should be cited as supporting a proposition until a check has been made through a citator to see if that case has been overruled. Such a check will also enable the brief writer to get the latest case on the subject. A case should not be cited until it has been carefully read. If used, the substance of the case should be briefly stated. In most instances the headnotes will contain an authoritative expression of the decision of the court, yet the headnote should not be quoted without reading the opinion.

Cases from the jurisdiction in which the case is pending should be selected first. If cases from other jurisdictions are used, when possible, those decided by the Supreme Court of the United States should be selected.

If a particular question involved in the brief is well settled, care should be exercised to avoid citing too many cases on the point. One or two cases exactly in point will suffice. Do not attempt to cite every case dealing with the subject matter in litigation.

If there are two lines of decisions on a particular point, the leading cases both for and against your position should be cited and discussed, and an attempt made to show why the favorable cases apply and the unfavorable ones do not. If the later cases are favorable, this fact should be called to the attention of the court.

Avoid use of the word "supra." No judge can be familiar with all the cases, and unless the full citation is set out, the burden is imposed on the judge of turning back through the brief and locating the citation. Citations to the National Reporter System should refer to the state and court in which the case was decided.

Where statutes are cited, the statute should be quoted in full, or in all material parts.

Conclusion

In order to close the brief in a forceful manner, the argument should be briefly summarized. This summary might properly consist of a restatement of the points which have been discussed in the argument and a very brief statement of the reasons which have been advanced in support of the points.

The brief should close with a respectful submission of the case to the court and the signature of counsel. A form of submission is:

It is respectfully submitted that the court below erred in its rulings, and, for the reasons stated, its judgment should be reversed.

FORM OF APPELLEE'S BRIEF

What has been said with respect to the preparation of the brief for appellant applies as well to the brief for appellee with possibly a few exceptions. The rules of most appellate courts do not require that the appellee's brief contain a statement of the questions involved or a statement of the facts in the case. In order to save the court time and trouble and to avoid confusion, a restatement should be avoided unless, after a careful study of appellant's brief, it is apparent that the questions and the facts have been improperly stated. In this event a short statement should be added showing why the statement of the questions and the facts was incorrect.

The argument should be devoted so far as practicable to a discussion of the points set out in appellant's brief where the point is discussed. This enables the judge, if impressed by some point in appellant's brief to turn quickly to appellee's brief to determine what answer has been made to the argument. Where points involved in the case have not been raised in appellant's brief, they should be set out and discussed in appellee's brief. A study of the cases cited by appellant should be made and an effort made to distinguish them. Appellee's brief should also close with a respectful submission of the case to the court.

Students in the Clinic should remember that the purpose of an appellate brief is to inform the court of the nature of the controversy, the facts out of which the controversy arose, the decision of the lower court, and points involved in the case and the reasons why the judgment of the lower court should be affirmed or reversed. No brief will be accepted by the Clinic staff unless it conforms to this standard.

The actual preparation of the brief is again a matter of individual conferences between student and instructor. As with all the other work in the Clinic course, the briefing assignments are all too few to accomplish the desired result. It is, however, not unusual for the student to feel that he has developed in his mind a framework of procedure no matter in what kind of case he may be called upon to prepare a statement of law.

PREPARATION OF CASES FOR TRIAL

The Duke Legal Aid Clinic handles comparatively few civil trials, in part because the amounts of money involved take them out of the legal aid jurisdiction. Some divorce matters are handled under severe restrictions. Some juvenile court work is done. In general, however, the exercises in trial and appellate briefs bring the class in touch with such experience as we can afford time to give them. Practice Court work is more directly oriented to this end.

In the criminal field the Legal Aid Clinic handles annually some fifty or sixty cases. Members of the staff try the cases, but the students, under supervision, prepare them. The students of the Duke University Divinity School conduct religious services in the County Jail every Sunday morning. After the service, the congregation frequently requests the aid of a lawyer. The Divinity School student in charge refers these requests to the Legal Aid Clinic. Here they are subject to close scrutiny to determine (a) whether the applicant is entitled to legal aid and (b) whether there are facts which justify us in appearing.

This exercise is similar in form to the development of a trial brief in criminal cases. The relationship to material and methods in other practice courses, like all our office work, is only incidental. Student participation, while very extensive in the pre-courtroom stages, usually is limited to observation of the trial itself. Occasionally a judge will allow a student to ask a few questions; but, in the absence of a statute permitting law students to try cases, it appears good policy not to press for privileges which may offend other members of the bar.

The mental process is simple, and the following steps are involved:

1. *First Interview with the Client.* The client, being a person unable to produce a bondsman, is held in jail. The law student visits him there for the purpose of deciding (a) whether we are to take the case and (b) what are the facts.

2. *Checking the Client's Story.* In an effort to evaluate the legal worth of the client's story the student is expected to secure all possible information from (a) police records, (b) eyewitnesses, and (c) character witnesses.

3. *Writing up the Case.* Below the reader will find a sample case written up by a student on the basis of information gathered in steps 1 and 2.

4. *Legal Research.* The students at this point examine statute and case law bearing upon the problem and prepare a brief and informal memorandum.

5. *Decisions.* Here follows a discussion of legal, practical, and ethical considerations bearing upon whether we are to take the case; and, if so, how far we are to go.

It is expected, but not required, that the student attend the trial of the case which he has prepared unless this interferes with other law school work. Usually he desires to be present. Afterwards the

staff member who tried the case and the student have a conference about events occurring in the courtroom.

The following is a sample case described on a form designed for the purpose.

CLINIC CASE NO. .....

LEGAL AID CLINIC

OF

DUKE UNIVERSITY LAW SCHOOL

Defendant ... *Willie Jones (c)* ... Address ... *115 Cora Alley* .....
Co-defendant ... *none* ..... Address ... *(in jail)* .....
Charge ... *A. & B. W. D. W.* .....
Date received in clinic .. *1/15/41* .. Source ... *Divinity School* .....
Date arrested .. *12/27/40* .. Has client been in jail since arrested? .. *Yes* ..
Warrant No. .. *540* .. Who swore out warrant? .. *Patrolman Tom Brown*
Date of warrant .. *12/25/40* No. of Indictment ..... *30* .....
(same as on calendar)
Date of indictment ... *1/13/41* ...
Plea entered in Recorder's Court ... *not guilty* ... Did client understand the significance of plea entered? ... *Yes* ... If not, explain .....
.....
Disposition of case in Recorder's Court (probable cause) ... *6 months on roads* ... Was client represented by counsel in Recorder's Court? .. *No* ..
Does client know of any source of money whereby he may secure bail or pay counsel, or does client have any property for security? ... *No* .....
Amount of bail ... *$200.00* ... Has client ever been represented by Clinic on a former charge? ... *No* ...

..... *Robert Young* ....
Student assigned to case

Has work been fully completed? ... *Yes* .....

SOCIAL INVESTIGATION

PERSONAL HISTORY

Name ..... *Willie Jones* ..... Alias ..... *"Bad Boy" Jones* .....
Color .. *N* .. Age .. *22* .. Place of Birth .. *Durham* .. Religion ... *Baptist* ...
How long has client been a resident of Durham County? .. *All his life* ...
Previous Criminal Record (insert dates) ... *Oct., 1936—Held for investigation—released ... June, 1937—Larceny of chickens—30 days ... Dec., 1938—Public Drunkenness—$5.00 and costs ... May, 1940—Assault and Battery—30 days* .....
Juvenile Record ..... *May, 1934—Cutting school* .....
Probation, suspended sentence, or parole outstanding? ..... *None* .....

Education (grade) *10th* Age leaving school *15 years*
Why? *Had to go to work to help support mother*
Mentality *Fair* Will client make a good witness? *Good*
Physical appearance: *Husky* lbs. *165* Health *Good*
Has letter been sent to doctor, or hospital for report? *No medical record* (attach reply)
Marks of identification *Scar rt. cheek*

FAMILY HISTORY

	Name	Address	Occupation	Age
Father	*Dead*			
Mother	*Minnie Jones*	*115 Cora Alley*	*Washing*	*50*
Separated (why, when and where)				
Brothers	*Tom Jones*			*16*
Sisters	*Frances Jones*			*12*
Wife (previous marriage)	*Single*			
Children (names and ages)	*None*			

State who and to what extent persons are dependent on client *For past 3 years client has contributed $3.50 wk. to his mother's support.*

WORK HISTORY

Names of Employers (last employer first)	Address	Tel.	Type	Dates Employed
Ser. Sta.	*700 Pine St.*	*N-912*	*Helper*	*8/1/37 to date*
Shoeshine Parlor	*57 W. Pettigrew St.*		*Shoeshine boy*	*1934 to 1937*

Have you sent letters to former employers concerning client's work record and integrity of character? *Yes* Attach replies.
If client is placed on probation or sentence suspended, can he get work? *Yes, Ser. Sta., 700 Pine St.*
Was client employed when arrested? *Yes* How long out of work? Aid from Welfare Dept. now? *No*
Previously? *No* Has letter been written to social agency having previous contact with client? *Has had no contact* (attach reply).
Has client been employed on relief work? *No* CCC Camp *No*
Comments *Client has a good work record, and his present and former employers think he should have a suspended sentence.*

CHARGE

Insert language used in Warrant or Bill of Indictment *That on Dec. 25, 1940, with force and arms, Willie Jones did unlawfully, Maliciously, etc. strike Eddie C. with a Pop bottle.*

STATEMENT OF DEFENDANT

(If space is insufficient, insert sheet; if you think a diagram of scene of crime important, insert sheet.)

Client says that he and Eddie C. had been going with Lucy. That he had never liked Eddie C. since they had a fight in high school. That on Christmas Day, 1940, client's mother had made some eggnog and Will had drunk about four or five cups between four and five o'clock that afternoon. That about 5:30 P.M. he was feeling good; so he decided he would take a Christmas present to his girl Lucy, who lives on Ray's Alley. About 6:00 P.M. he arrived at Lucy's home and gave her the present and while they were sitting on the porch listening to the piccolo, Eddie C. came up on the porch and said, "Come on, Honey, let's go to the show." Whereupon client said he had a date to take Lucy to the show. Eddie said, "Well, I am going with you," and took Lucy by the hand. Client said, "Let her hand go." Whereupon Eddie pushed client over a chair. Client said Eddie was larger than he (190 lbs.); so he picked up a bottle and started at Eddie. Just then a patrol car drove up and client ran. Client denies hitting Eddie with the Pop bottle. Client said he was arrested at Service Station on December 27, 1940.

Patrolman Tom Brown testified in Recorder's Court that it was quite dark when he saw that something was going on, on the porch at 20 Ray's Alley. He said when he stopped to investigate, client ran and Eddie accused client of an assault and battery with a Pop bottle. The warrant was sworn out on Eddie's statement.

Arresting officers....*Patrolman Tom Brown*.....

If they testified in Recorder's Court, did they try to construe some statement or act of client as an admission?....*No*.....

Witnesses subpoenaed by the State:

Name	Address	Did he or she testify in R. Ct.	Criminal Record
Eddie C. (c)	*10 Ray Alley*	*Yes*	*June, 1937, A. & B. W. D. W. with intent to kill—2 years.*

Other Material witnesses not subpoenaed by State:

....Lucy, 20 Ray Alley. She did not testify in Recorder's Court. Lucy says client did not strike Eddie and she further says client was not drunk.

Have you checked criminal records of all witnesses?.....*Yes*.....

Briefly state which of the witnesses testified in Recorder's Court and what client says they testified to:....*Eddie testified client made an unjustified attack on him with a Pop bottle. Denied pushing client over chair.*

Do you know of any hidden reasons why state's witnesses should have malice or hatred toward client?....*Yes—Eddie wants to have client sent to roads for six months so that he may court Lucy unmolested*.....

CHARACTER WITNESSES

Names	Addresses	Tel.	Duration of acquaintance and opportunity to observe client
Sam S.	*Hillside*		*Six years*
Joe B.	*Hillside*		*Ten years*

Have letters been sent out or statements taken from character witnesses?
Letters received
Do any character witnesses wish to voluntarily testify in court for client?
No

LEGAL INVESTIGATION

Set forth section of Consolidated Statutes making offense a crime, and any pertinent cases construing statute so as to bring this case out of statute, etc. Set forth any particular rules of evidence that may be important concerning certain of the State's evidence. Note points that the State must prove to make out case.

C. S. 4215—*Punishment for assault.* If our witnesses are believed, client only guilty of a simple assault which carries a maximum punishment of 30 days. State must prove that there was a "battery" or actual blow with the Pop bottle. An assault and battery is a misdemeanor and carries a punishment at the discretion of the court from 30 days to 2 years.

State what plea the defendant should enter to charge. *Not guilty*
Do you think we should tender a lesser plea to solicitor, and if so what?
Guilty of "simple assault" and ask for suspended sentence.
In the event client pleads guilty or is found guilty by the jury, what plea would you make to the court for mercy? *(1) Assistance to mother, (2) good work record, (3) criminal record fairly good, (4) no injury, (5) client has been in jail over 30 days now, (6) woman in case.*
List witnesses client should subpoena. *Lucy, 20 Ray's Alley*

Members of the staff of the Legal Aid Clinic determine as a result of this investigation (a) whether or not to accept the case, and (b) if it is accepted, how the trial shall be conducted. After the trial the student and staff member have a conference to clear up any doubtful matters.

CHAPTER V

TIME, EXAMINATIONS, AND GRADING

THE present chapter discusses three administrative phases of Legal Aid Clinic work: time, examinations, and grading.

The Time Problem

Three of the objects of the administrative regulations in the Legal Aid Clinic on the subject of time are: (1) to restrain the overenthusiastic student from putting in too much time; (2) to encourage the easygoing student to keep pace with the class, and (3) to train all the students to keep a record of time spent. Two devices are employed to these ends: the timebook and the follow-up system.

It is not unusual for a student in his enthusiasm over the first few cases that he handles to spend a disproportionate amount of time on the Clinic work and consequently neglect his other courses. Other students, because of their inexperience with this type of work, find it extremely difficult to embark upon, and later promptly to complete, unaccustomed tasks, particularly in the early part of the course. There are constant indications to the observant staff member that each student has his own rate of speed in learning, and it is seldom that the progress of two students corresponds. But this is less a matter of concern in the Legal Aid Clinic course than it is in other courses, because so much of our work is more on an individualized than on a class basis. If one could assign a series of equally difficult cases in turn to each student, the time equalization problem would be simpler. But there is no way of predicting how much time a given student will consume on a certain task or how complicated the case may turn out to be. Therefore, it is necessary to see that the work done and the hours spent by each student approximate the average of the class and that the average does not exceed the amount of time which we are entitled to expect from students in return for the allotted number of law school credit hours.

1. The timebook is a device similar to that employed in many large law offices which operate on a cost accounting basis. Each student has a page in the book and is instructed to enter on that page a record showing the date when the work is done, the case upon which he is working, and the amount of time spent on each step

taken. In one sense the practice is a nuisance, but from another viewpoint it has valuable results. First, it tends to develop in a student an orderly mental habit of keeping a record of how much time he spends on a given case. Later, when in his law practice he comes to submit his bill for services or when he is required to explain his activity to a client or someone else, this record may be of considerable value.

Again it is possible, by referring to the book, to get a rough idea of the amount of time spent by each man; and from it to average the amount of time spent by the class. If, as the course progresses, it appears that the record of an individual student is low, additional assignments of work can be made. On the other hand, if the record of any individual student shows a disproportionate amount of time spent, there can be relaxation in the tasks. Finally, the timebook is an answer to critics who complain that the course absorbs too much law school time.

For a while it was thought that there might be some demonstrable correlation between time spent and the ability of the student. At present the staff is doubtful of this. Other criteria for determining the effectiveness of the student seem more satisfactory. They will be discussed later in this chapter.

2. *The follow-up system* is concerned with form rather than time, but it has a place here because it enables the staff to decide whether the student has been paying proper attention to particular cases. The basis of this system is a docket card. For each new case which comes into the office a docket card is made out with certain formal data about the client and the initial facts available about the problem. Thereafter the student is instructed to enter on this card the date when he does his work and, briefly, the nature of the work done. At least once a week the staff meets to consider the present status of all the active cases. By going over the docket cards it is possible to tell whether the student has kept his record up to date. If, in a given case, he is neglecting some step that should be taken, the matter may be called to his attention. In cases of continued neglect the case may even be taken out of his hands.

One effect of this device is to provide more prompt service for the clients. They are entitled to as good legal assistance as they can obtain in the best law office in the vicinity; and, even though serving them involves a somewhat complicated administrative structure, because there are so many people working in the Clinic, some device of this sort is a necessity. From the standpoint of the student this

is a continual goad. That it may be annoying at times is obvious; but this is offset by its value in creating orderly habits of mind: first, of keeping a record of work and relieving strain upon memory; second, of following up at periodic intervals to see that one has not omitted any step for which one might be criticized.

The practice of writing up these docket cards is also of formal value in assisting the student to think how best to marshal facts and set them down in concise form so that they will bring to his mind, or to the mind of someone else who reads these cards, all the necessary details of the legal problem. If they are written up in proper form, a member of the staff may take hold of the case at any stage in the event that the student is temporarily absent and the client requests some immediate attention. The extent to which each student is able to conform to the requirements of the follow-up system is reflected in his grade. Additional information with regard to these administrative details will be found in the *Instructions to Students*.

EXAMINATIONS

The Legal Aid Clinic course at Duke University runs for the full year. Examinations are given at mid-year and also at the end of the spring semester. In order to give the student time to do uninterrupted studying on his other courses, the final examination in the Legal Aid Clinic is given shortly before the regular Law School final examination period. The handling of office cases and the classroom work are brought to a somewhat earlier conclusion. The general objects of these examinations are: to view the progress the students have made in acquiring facility in the use of the mental processes involved, and to provide a common denominator for grading them. So much of their work is on an individual basis.

(1) *Mid-year Examinations.* The particular objects of the mid-year examinations are three: to make the student review the mental process of the practicing lawyer in taking hold of a case; to find out how well he is able to use the courthouse as a source of facts; to see what progress he has made in the art of legal letter writing. The exercises involve three stages. Part I is an oral examination based on a hypothetical case. Thirty minutes are allowed each student. The instructor acts as "client," and the student takes the position of an attorney in his office, greeting the client, interviewing him, and planning the campaign. Part II grows out of Part I. The case presented is one in which progress cannot be made until certain additional information in the courthouse has been secured. The student is in-

structed to go to the courthouse and to find the information, taking not more than two hours, including the time spent getting to and from the courthouse. Part III involves writing the instructor a letter outlining what may or what ought to be done as a result of the information obtained from Parts I and II. The best method of explaining this situation is to illustrate it. The following case was used during the mid-year examinations in 1941-42.

The instructor gives this information only in response to questions by the student:

"My name is Joe Doe. I live in Rockwood, Patterson Township, Durham County, North Carolina. I am white, fifty-one years old. I own a 1940 O., four-door sedan. On December 1, 1941, I left the Law School about 12:30 to drive home for lunch. I had to pick up some groceries at the P. & A. Store on Chapel Hill Street, so I drove down University Drive to Chapel Hill Street, going about thirty miles per hour. As I approached the intersection of University Drive and Chapel Hill Street, I glanced in the windshield mirror and saw a brown and white sport F. coupe. It was coming up on me very fast, and I saw a Duke sticker on the front windshield. I had seen this same car several times before, driving around the campus and parked on the campus, and I believe it is owned by a Duke student or employee.

"As I came to the intersection, I slowed down to fifteen miles per hour. I noticed another car coming toward me from my left out of Gattis Street. It was a C. coupe, an old model. The driver was leaning out the left side of his car, waving at a man standing at the gas station on the northeast corner of Gattis Street and Chapel Hill Road. I swerved to the right to avoid him, but he kept on coming about thirty miles an hour and struck my car at the front left wheel and turned me partly over. There was a second crash, and the car behind me hit my rear fender and knocked my car completely over. As I went over, I heard another crash and a good deal of screaming. I was considerably cut up when my head struck the dashboard and I was only partially conscious when they pulled me out of the car and took me to the Duke Hospital, where I remained until yesterday."

Because time for this exercise is limited, the student is not required to obtain more facts than he could expect to secure from the client. In order to give him a chance to demonstrate his resourcefulness and imagination, he is asked, however, to give a list of other reasonably useful sources of facts as they appear to him after the first interview.

His answers are checked against a list such as the following:

1. Statements from the occupants of the cars involved.
2. Statements from all witnesses who saw the accident or who came upon the scene immediately afterwards.

3. Get each witness to make a diagram showing: (a) scene of collision; (b) point of impact and position of cars at time; (c) position of cars when they came to complete stop; (d) skid marks, if any; and (e) measurement of distance from point of impact to points where cars involved stopped, or an approximation.

4. Copy of report of police officer who investigated and statement if one can be obtained.

5. Check police records of drivers of cars.

6. Determine ownership of all cars and whether owners carry public liability and property damage insurance.

7. If person other than owner was driving, determine if employee or member of family.

8. Take photographs of all cars, showing damaged portions.

9. Get estimate of damage to each car from garage.

10. Get statement from client's physician of his injuries and possible consequences.

11. Get bills from attending physician and hospital.

12. Determine solvency of owners of cars by making check of records at courthouse.

When the student has spent thirty minutes endeavoring to collect these facts from the instructor and indicating such other sources as may occur to him, he is ready for Part II. The question is whether it is worth while for the client to sue one of the parties involved in this automobile accident. This in turn depends upon whether the supposed defendant is judgment proof. The name of some person is selected by the staff, and each student is required to go to the courthouse and inform himself of this person's property holdings. The results of this search are embodied in Part III in a letter in which the student advises the instructor whether or not it was worth while taking a chance to sue.

(2) *Final Examinations.* The objects of the final examination are: to review the work of the year and to test the progress which the student has made in familiarizing himself with the entire mental process. The method employed is again that of an individual oral examination. A case is selected, prepared, and submitted to the class. Each student is given an hour in the course of which he is expected to do three things: for thirty minutes to gather facts, for twenty minutes to analyze these facts for questions of law, and during the final ten minutes to indicate as much of the plan of campaign as he is able. It is probable that this device favors the quick thinking man as compared with the slow thinker, but the same objection might be made of most other law examinations. The instructor is concerned not

so much with whether the student reaches the same conclusions as the staff reached while preparing the question. Rather, search is made for indications that the student has an orderly method of approaching an unexpected problem.

PART I

When the student enters the room, two members of the staff are present so that each may grade him separately and thus check against any personal bias. Effort is made to have the student feel at home and to lessen the inevitable tension surrounding the exercises. The facts are placed on sheets of paper concealed around the instructor's desk. The student must exercise more or less ingenuity before he knows what facts are to be gathered. If he asks the right question, he is handed a particular piece of paper containing the answer. If he does not ask for it, he does not get it. If, on the other hand, he indicates that he is searching for this particular information and has some idea about where to go to get it, the paper may be given to him. Each sheet of paper is given a numerical value by the staff members so that at the conclusion of the examination it is possible to record very readily the points scored by the particular student. In every set of questions there is at least one in which considerable preliminary thinking is required in determining how to get the information. Naturally, if the student displays appropriate resourcefulness, he is given a higher grading on that particular problem. In the case here used as the illustration the difficult person to find is the truck driver who ran into the client's car. There are half a dozen different places to look for him, and the student ought to recognize most of them before he is entitled to the sheet of paper containing the information which this important witness will give. In order that the reader may more readily understand the method employed, the following statement of the case is included.

The first sheet of paper tells the student very little concerning the case. It is therefore necessary for the student to make further inquiries. He knows his client's name, that she has been hurt, and that she has a letter and a check. He may proceed to inquire the circumstances of her injury or may ask to see the check. The former (Sheet No. 2) will lead him directly to the details of an automobile accident as given in the Second Sheet and will show that the client herself knows very little beyond the fact of the injury and the receipt of the check. An inspection of the check (on Sheet No. 4) and the letter (on Sheet No. 3) indicates that litigation has apparently taken

place, although the client seems unaware of it. Further, there are the names of lawyers representing the parties. This should suggest to the law student that his client is already represented by another lawyer and he is faced with a decision in the field of ethics—what is he justified in doing for a client who already has a lawyer.

If the law student decides he will write a letter to the Clerk of Court, we ask him to dictate the letter, and part of his grade depends upon how well the letter is phrased. In reply he gets Sheets No. 5 and No. 6 (a letter from the Clerk and a copy of a consent decree), which bring the undertaker into the picture and show that the case was settled by a consent judgment. It should also suggest that a power of attorney or other contract may have been signed by the client. The student may then decide to ask the client about a power of attorney. If he does, he receives Sheet No. 7, which suggests that the undertaker has been quite active in the case.

Here again a decision must be made. What is the next step? Let us assume the student decides to consult the lawyers for the defendant. He then receives Sheet No. 8, which indicates that they thought the case was a close one and so made a substantial offer of settlement which was accepted and a consent decree entered. It also suggests why the decree was for $4,300 while the original client only received a check for $764.

If the student is still suspicious, he may decide to talk with the undertaker. This individual on Sheet No. 9 indicates that a power of attorney was signed. Upon inquiry a copy of the power of attorney (No. 10) is given the student.

The student may well wonder how to reconcile his client's statement that she remembers no power of attorney with the production of a document. One way of investigating is to ask the physician who attended her. He has his story on Sheet No. 11, which may well increase the student's suspicions.

If the student now wants to talk to the lawyers who previously appear to have represented his client, he is rebuffed by Sheet No. 12. But he does glean the information that they have on occasion represented the Transport Company, and his suspicions may be further aroused.

At sometime or other he should be sufficiently interested in the details of the accident to want to see the Police Report (Sheet No. 13). He may also want to hear the story of the Trucking Company (Sheet No. 14). But he should seek the story of the truck driver.

This is the most difficult sheet to secure because the student must figure out how to find him.

Possible places to look for him are the military or naval forces, the trucking company, the truck drivers union, his home town, his family, police records, his driver's license. If the student recognizes several of these possibilities, he is entitled to assume that he has found the man, and he receives Sheet No. 14.

Sheets No. 15 and No. 16 are included in case the student decides to take matters up with the Grievance Committee of the Bar Association.

If the student pursues a systematic course of thinking he should have obtained all, or a substantial number of, the sheets. From them he is able to put together a story of a motor accident: two persons killed and the third unconscious. An undertaker comes along and takes matters in hand, securing a power of attorney which he uses to hire lawyers, start a suit, settle the suit by a consent decree. There are circumstances which should arouse his suspicions that all is not well. If he has learned how to plan a campaign, he will at once think in terms of possible plaintiffs and defendants in actions which might be brought and of the other problems which should confront a lawyer. He is also concerned with several questions of ethics, and he must give thought to whether he has enough evidence to justify taking any action at all.

If, on the other hand, his thinking is confused, he may not have asked for the proper papers, and the story may be so inadequately integrated that he is not justified in doing anything. We are not concerned that he follow the outline of thinking which we have worked out and set down above, but we believe we are justified in insisting that he demonstrate that he has *some* system.

The reader may have some difficulty in visualizing the operation of the student's mind as he struggles to think of the next *sheet*. But to those persons who have seen the exercise in operation its dramatic quality is quite clear. The first sheet of paper following is the original statement made by the client to the lawyer. This is handed to the student without his asking for it. From there on, however, he is on his own and must decide where to go and what to ask for. The facts of the case are hypothetical, and any resemblance to any person living or dead is purely coincidental.

SHEET No. 1

STATEMENT OF CLIENT

"My name is Mrs. Rufus. I live out in the country from Durham.

"I've been sent here to see if you could help me. Over a year ago I got hurt, and I haven't been out of bed more than five months altogether since that time. These people that hurt me haven't been to see me or nothing. A couple of days ago, I got a letter and a check and I guess it is to pay me for my hurt, but I don't know whether to take this money or not."

SHEET No. 2

CLIENT'S STATEMENT

"I'm sixty years old. I live on a farm out from town here. My husband and I, and my son, George, have farmed this land and have made good tobacco crops on it. My boy was one of the best at curing tobacco. We all averaged about $2,700 a year out of our crop. About October 20, 1940, we decided to take a trip down to a City on the coast to see some friends. After we passed S....., we saw coming toward us a big truck carrying tobacco. My husband remarked about the truck swaying from side to side and told my boy, who was driving, to watch out. The truck seemed to straighten up in the road about a hundred yards from us, but just as it got about twenty feet from us it swerved across the road and hit us head on. That was all I remember, until I woke up in the hospital at S..... about three days later. I was awfully torn up and lay in a cast from then until February 16, 1941. They didn't tell me until about Christmas that my husband and son were killed in the accident. No one talked to me about the accident, and all I knew about a case over it was that letter I got from the Clerk."

SHEET No. 3

CLERK SUPERIOR COURT

.....COUNTY

Mrs. Rufus,
R. F. D. 2
Durham, N. C.

Re: Rufus et al. vs. Trucking Co.

Dear Mrs. Rufus:

You will find enclosed a check in the amount of Seven Hundred and Sixty-four Dollars ($764). This is the amount remaining of the judgment obtained in the above entitled action after deductions for court cost, attorneys' fees, cost of administration of the estate, etc.

You will please acknowledge the receipt of same by signing and returning the lower half of this voucher marked "Return to Clerk."

Very truly yours,

.....

A. B. Black, Clerk

SHEET No. 4

This check is in payment of following items. If amount is not correct, return check.

Date Amount Total

In full for judgment in Rufus vs. Transport Co.

Superior Court ..... Co.

No.

S....., N. C., ...19....

Pay to the Order of

..... Mrs. Rufus ..... $764 $\frac{xx}{100}$

Seven Hundred & Sixty Four .. $\frac{xx}{100}$ Dollars

A. B. BLACK,

Clerk of Superior Court

THE ..... NATIONAL BANK

S....., N. C.

From: Clerk Superior Court

..... County

Re: Rufus et al. vs. Transport Company

$764.00

Received by.....

Attached check is in full payment of account as shown above. Detach same prior to banking. No receipt required. If not correct, return both check and statement.

(After the student writes his letter to the Clerk regarding the case, he receives Sheet No. 5.)

SHEET No. 5

CLERK OF SUPERIOR COURT

..... COUNTY

Dear Sir:

Re: Rufus et al. vs.

..... *Trucking Co.*.....

The above entitled action was brought by Mr. James of S....., North Carolina, as Administrator for the Estates of Mr. Rufus and Mr.

George, and also as attorney (for the purpose of this action) for Mrs. Rufus. Mr. James is a local undertaker, and I understand handled all the arrangements regarding this affair. He was represented by the local law firm of Madd and Pleasant.

The adverse party was the Trucking Co. with offices in ....., N. C. They were represented by Settleman, Settleman and Watt of ..... After coming on for trial the case was settled by consent judgment.

Hoping this is the information you desire, I am

Very truly yours,

.....

A. B. Black, Clerk.

SHEET No. 6

NORTH CAROLINA IN THE SUPERIOR COURT

.....COUNTY

Mrs. Rufus
vs.
Trucking Co.

James, Adm. of
Rufus and George
vs.
Trucking Co.

JUDGMENT

These causes having been consolidated for the purposes of trial and coming on to be heard and being heard before his Honor, ..., Judge presiding at the January term of the Superior Court of ..... County, and it appearing to the court from the statement of counsel that all matters of controversy set out in the pleadings have been agreed upon by the parties and that the defendant has agreed to pay the plaintiffs, and the plaintiffs have agreed to accept the sum of $4300.00 in full accord and satisfaction of this action from which shall be paid by the plaintiffs the cost of this action;

Now, therefore, by consent, it is ordered, adjudged and decreed that the plaintiffs have and recover of the defendant the sum of $4300.00 and

that the plaintiffs pay the cost of this action to be taxed by the Clerk.

This is the 7th day of January 1942.

. . . . . .

Judge Presiding

CONSENT:

Madd and Pleasant
Attorneys for the Plaintiffs

Settleman, Settleman & Watt
Attorneys for the Defendant

SHEET No. 7

STATEMENT OF CLIENT

"I know nothing of a power of attorney. I was awfully sick until about Christmas. I don't remember talking to Mr. James. He may have come to see me, but I don't remember anything about it."

SHEET No. 8

STATEMENT OF SETTLEMAN, SETTLEMAN AND WATT (I. M. SETTLEMAN)

"All our file on this case indicates is that we received a report from our client including statement of driver which told of the accident. There was evidence to indicate both drivers were at fault. That both were driving too far over towards the middle of the road and that because of the rain and fog visibility was poor.

"We also received a letter from the firm of Madd and Pleasant saying they represented Mr. James and Mrs. Rufus. We had done business with that firm, and since it seemed to be a close case, we were willing to settle rather than go to court. They instituted a suit, and we paid Forty-three Hundred Dollars in full settlement of all claims. They were to pay all costs.

"That's all I know about it."

SHEET No. 9

STATEMENT OF MR. JAMES

"I was called to the scene of the accident by the State Highway patrolman. I took Mrs. Rufus to the hospital and brought the others here and prepared them for burial. After Mrs. Rufus had been in the hospital for a month or more, I asked her if she didn't want me to look after things for her. She said she did; so as her agent I hired a lawyer. I also got myself made Administrator of the two others, so I could collect my

money. What was done after that was up to my lawyers. I left a power of attorney with them, signed by Mrs. Rufus and witnessed by my secretary."

SHEET No. 10

NORTH CAROLINA

.....COUNTY

Know all men by these presents, that I, Mrs. Rufus, have made, constituted, and appointed, and by these presents do make, constitute and appoint Mr. James my true and lawful attorney for me and in my name, place and stead for the purpose of retaining counsel for me to bring an action against the Trucking Company for personal injuries to myself, giving and granting unto James, said attorney, full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises in retaining said counsel as fully to all intents and purposes, as I might or could do if personally present.

In witness whereof we have hereunto set our hands and seals this 1st day of Dec., 1940.

Mrs. Rufus (SEAL)
James (SEAL)

Sealed and delivered in the presence of

.....
SECRETARY

SHEET No. 11

DR. MCCURDY

"Mrs. Rufus was in a semiconscious state from a week after she came in until about a week before Christmas. She could not or should not have transacted any business during this time as she wouldn't have known anything about it.

"She will always walk with a stoop, dragging her right leg. The left leg will be partially disabled the rest of her life. She'll have no use of her left arm. Her nervous system was so torn up that it is a miracle that she is alive today."

SHEET No. 12

STATEMENT OF MADD AND PLEASANT

"As far as we are concerned the case is closed. Mr. James retained us, and we investigated the case. It was a close matter, but as we do work for the Transport Company they were willing to concede a few points and make a good offer of settlement. They paid us Forty-three Hundred Dollars. We had it on a fifty-fifty contract. From the balance of $2150

we paid one hundred and six dollars for expenses and court costs. The balance of $2044 was turned over to Clerk for Administrator and Mrs. Rufus. I understand the Administrator paid out for cost, funeral expenses the sum of $1280. That's all I know of the case, and I don't want to hear any more about it."

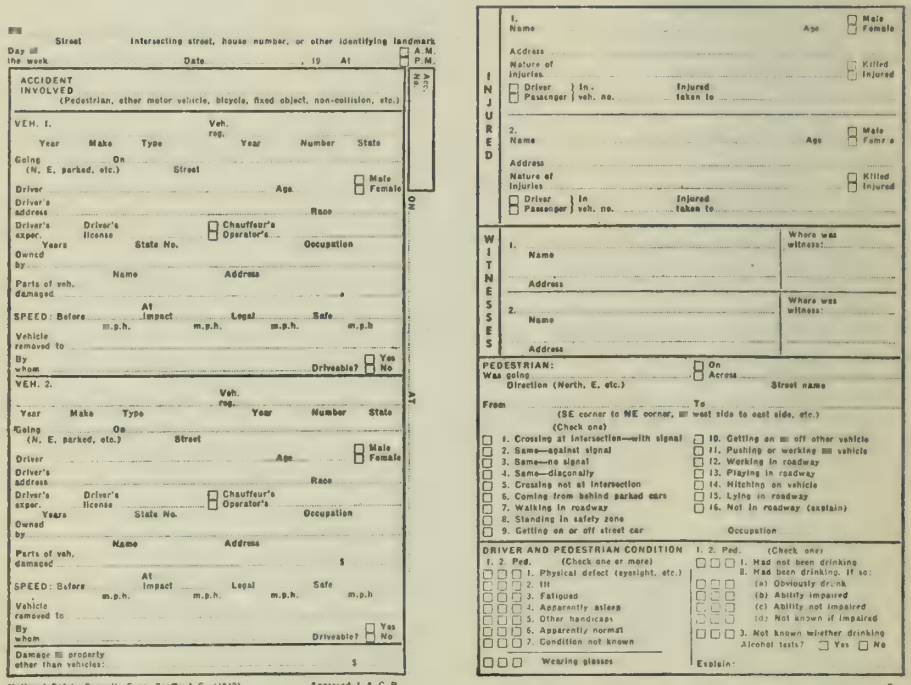
SHEET No. 13

STATEMENT OF SUPT. OF TRUCKING CO.

"You'll have to see our lawyers about this case. We turned over everything to them. We sent all the reports and the driver's statement to them. That driver isn't with us anymore.

"I don't know where he is."

TRAFFIC OFFICER'S REPORT


Street Intersecting street, house number, or other identifying landmark
Day of the week Date , 19 At A.M. P.M.
ACCIDENT INVOLVED (Pedestrian, other motor vehicle, bicycle, fixed object, non-collision, etc.)
Acc. No.
VEH. 1. Veh. reg. Year Make Type Year Number State
Going On (N. E. parked, etc.) Street
Driver Age Male Female
Driver's address Race
Driver's exper. Driver's license Chauffeur's Operator's
Years State No. Occupation
Owned by Name Address
Parts of veh. damaged
SPEED: Before At Impact Legal Safe
m.p.h. m.p.h. m.p.h. m.p.h.
Vehicle removed to
By whom Driveable? Yes No
VEH. 2. Veh. reg. Year Make Type Year Number State
Going On (N. E. parked, etc.) Street
Driver Age Male Female
Driver's address Race
Driver's exper. Driver's license Chauffeur's Operator's
Years State No. Occupation
Owned by Name Address
Parts of veh. damaged $
SPEED: Before At Impact Legal Safe
m.p.h. m.p.h. m.p.h. m.p.h.
Vehicle removed to
By whom Driveable? Yes No
Damage to property other than vehicles: $
National Safety Council, Form Traffic 1 C. (1942) Approved 1 A C P
INJURED
1. Name Age Male Female
Address
Nature of injuries Killed Injured
Driver Passenger } in veh. no. Injured taken to
2. Name Age Male Female
Address
Nature of injuries Killed Injured
Driver Passenger } in veh. no. Injured taken to
WITNESSES
1. Name Where was witness?
Address
2. Name Where was witness?
Address
PEDESTRIAN: Was going On Across Direction (North, E, etc.) Street name
From To
(SE corner to NE corner, west side to east side, etc.)
(Check one)
1. Crossing at intersection—with signal
2. Same—against signal
3. Same—no signal
4. Same—diagonally
5. Crossing not at intersection
6. Coming from behind parked cars
7. Walking in roadway
8. Standing in safety zone
9. Getting on or off street car
10. Getting on or off other vehicle
11. Pushing or working on vehicle
12. Working in roadway
13. Playing in roadway
14. Hitching on vehicle
15. Lying in roadway
16. Not in roadway (explain)
Occupation
DRIVER AND PEDESTRIAN CONDITION
1. 2. Ped. (Check one or more)
1. Physical defect (eyesight, etc.)
2. Ill
3. Fatigued
4. Apparently asleep
5. Other handicaps
6. Apparently normal
7. Condition not known
Wearing glasses
1. 2. Ped. (Check one)
1. Had not been drinking
2. Had been drinking. If so:
(a) Obviously drunk
(b) Ability impaired
(c) Ability not impaired
(d) Not known if impaired
3. Not known whether drinking
Alcohol tests? Yes No
Explain:
2

(In the actual case this report is filled out in detail.)

SHEET No. 14

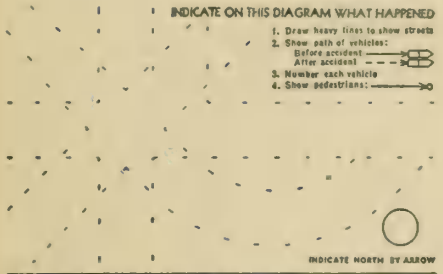
STATEMENT BY DRIVER OF TRUCK

(This sheet is given if the student outlines how to find the driver.)

"Well, there ain't no question about it being the Company's fault. I had told them (the company) about that tractor and trailer. There was something wrong with the coupling, and it caused the tractor to sway from side to side. This caused something to go wrong with the steering knuckle, and it had been hard to drive and control. I kept telling them about it and had been stopped twice by highway patrolmen. That morning, I told them I was not going to make another trip if it wasn't fixed. They told me to go on—that they were behind schedule but would fix it that night. Then the thing caught again just as I went by this car we are talking about, and I ran across the road and smashed into them.

"The Company and them lawyers representing the people didn't want me to tell all this; so I quit."

(NOTE: This letter and the next are alternatives. The student is given the one which suits the tone of his letter to the Bar Association.)



DESCRIBE ACCIDENT: .....

ARREST: 1. Name ..... Charge .....
2. Name ..... Charge .....

Time notified ..... ☐ A.M. ☐ P.M. Investigation at scene ☐ A.M. ☐ P.M. Photos taken ☐ Yes ☐ No Investigation complete ☐ Yes ☐ No

SIGNATURE .....

POINT OF IMPACT (Check ■ for each)

Vehicle 1. 2.
☐☐ 1. Front
☐☐ 2. Rear
☐☐ 3. Right front
☐☐ 4. Left front
☐☐ 5. Right side
☐☐ 6. Left side
☐☐ 7. Right rear
☐☐ 8. Left rear

WHAT DRIVERS WERE DOING (Check one for each driver)

Driver 1. 2.
☐☐ 1. Going straight ahead
☐☐ 2. Making right turn
☐☐ 3. Making left turn
☐☐ 4. Making U turn
☐☐ 5. Slowing or stopping
☐☐ 6. Starting from traffic lane
☐☐ 7. Starting from parked position
☐☐ 8. Stopped in traffic lane
☐☐ 9. Parked
☐☐ 10. Backing

(Check where applicable)

☐☐ 1. Passing
☐☐ 2. Avoiding veh., object, or pedest.
☐☐ 3. Skidded—before braking
☐☐ 4. Skidded—after braking
☐☐ 5. Hit and run
☐☐ 6. Driverless moving vehicle

VIOLATIONS INDICATED (Check ■ or more for each)

Vehicle 1. 2.
☐☐ 1. Exceeding lawful speed
☐☐ 2. Did not have right of way
☐☐ 3. Following too closely
☐☐ 4. Drove through safety ■■■
☐☐ 5. Passing standing street car
☐☐ 6. Passing on hill
☐☐ 7. Passing on curve
☐☐ 8. Cutting in
☐☐ 9. Other improper passing
☐☐ 10. On wrong side of road
☐☐ 11. Failure to signal, improper signal
☐☐ 12. Improper turn—wide right turn
☐☐ 13. Same—cut corner on left turn
☐☐ 14. Same—turned from wrong lane
☐☐ 15. Other improper turning
☐☐ 16. Disregarded police officer
☐☐ 17. Disregarded Stop-&-Go light
☐☐ 18. Disregarded Stop sign, signal
☐☐ 19. Same—Warning sign, signal
☐☐ 20. Improper start from parked position
☐☐ 21. Improper parking
☐☐ 22. .....
☐☐ 23. No improper driving indicated

LOCALITY
☐ 1. Industrial
☐ 2. Business
☐ 3. Residential
☐ 4. School, playground
☐ 5. Open country
☐ 6. .....

WEATHER
☐ 1. Clear
☐ 2. Cloudy
☐ 3. Raining
☐ 4. Snowing
☐ 5. Fog
☐ 6. .....

LIGHT
☐ 1. Daylight
☐ 2. Dusk
☐ 3. Dawn
Darkness with—
☐ 4. Street lights
☐ 5. No street lights

ROAD SURFACE
☐ 1. Concrete
☐ 2. Blacktop
☐ 3. Brick
☐ 4. Gravel
☐ 5. Dirt or sand
☐ 6. .....

VEHICLE CONDITION (Check one or ■■■ for each)

Vehicle 1. 2.
☐☐ 1. Defective brakes
☐☐ 2. Improper lights
☐☐ 3. Defective steering mechanism
☐☐ 4. Defective tires
☐☐ 5. .....
☐☐ 6. No defects
☐☐ 7. Not known
(Explain fully in remarks)
☐☐ Chains in use

VISION OBSCURED (Check where applicable)

Vehicle 1. 2.
☐☐ 1. Rain, snow, etc., on windshield
☐☐ 2. Windshield otherwise obscured
☐☐ 3. Vision obscured by vehicle load
☐☐ 4. Trees, crops, bushes, etc.
☐☐ 5. Building
☐☐ 6. Embankment
☐☐ 7. Signboards
☐☐ 8. Hill crest
☐☐ 9. Parked ■■■
☐☐ 10. Moving cars
☐☐ 11. Other (explain)

ROAD CONDITIONS

(Check one) (Check ■■■ or more)
☐ 1. Dry
☐ 2. Wet
☐ 3. Muddy
☐ 4. Snowy
☐ 5. Icy
☐ 1. Loose material on surface
☐ 2. Holes or deep ruts
☐ 3. .....
☐ 4. No defects
☐ Road under construction
☐ Detour

TRAFFIC CONTROL (Check ■■■ or more)

Functioning
☐ 1. Officer ■■■ watchman
☐ 2. Stop-&-Go light
☐ 3. Stop sign or signal
☐ 4. Warning sign or signal
☐ 5. R.R. crossing gates
☐ 6. R.R. automatic signal
Not functioning
☐ 7. .....
☐ 8. No control present

ROAD CHARACTER

Vehicle 1. 2. (Check one for each vehicle)
☐☐ 1. Straight road
☐☐ 2. Sharp curve or turn
☐☐ 3. Other curves

Vehicle 1. 2. (Check one for each vehicle)
☐☐ 1. Level road
☐☐ 2. Up grade
☐☐ 3. Hill crest
☐☐ 4. Down grade

ROAD WIDTH ..... feet

Total number of traffic lanes ..... Were lanes marked? ☐ Yes ☐ No
Were opposing traffic lanes separated? ☐ Yes ☐ No
If so, by what? .....

3 4

SHEET No. 15

BAR ASSOCIATION

Dear Sir:

I'm sorry that you have not furnished me with sufficient information upon which to base an opinion. As far as your records indicate, there has been a suit; you think the lawyer didn't get enough money for client, and out of what he got he kept too much.

As you know, fee contracts are between attorney and client. Unless you can furnish us with affidavits supporting a complaint of fraud (which complaint should be signed by yourself), we are in no position to proceed.

Very truly yours,

.....

C. Rayon, Sec.

SHEET No. 16

BAR ASSOCIATION

Dear Sir:

Thank you very much for your letter enclosing formal complaint against the firm of Madd and Pleasant. This complaint grows out of their conduct and procedure in handling the case of Mrs. Rufus.

The enclosed affidavits will greatly assist us in our investigation. As soon as this is complete, we will notify you when to appear before the examining committee for a hearing.

As you know, no action we take will help your client recover any more for her injury. Any further action along this line will be entirely dependent upon you and your judgment.

Thanking you, I am,

Very truly yours,

.....

C. Rayon, Sec.

PART II

The second part of the examination deals with an analysis of the legal problems involved. The following tentative list made by the staff members at the time they were preparing the question indicates that there are four general areas of law in which the mind of the student may be functioning. If he has an orderly mind, we should expect him, first, to see these four areas and then to develop each one separately insofar as the time available will permit. It is at this point that we find the greatest student difficulty. The illustration at the end of Chapter II shows in more detail the stages of thinking through which we might expect him to go.

Grading the students on these questions of law is a very difficult matter and one which requires close attention by the staff members who must follow the thinking of the student, perhaps even more than his words. If the student shows signs of confusion, it is frequently necessary at this point to bring him back to the main line of thought. It should be kept in mind that the student is not expected at this part of the examination to give the correct rule of law in North Carolina on the various points raised. We are concerned only that he should see the question. If he does, we feel we are entitled to assume that he can recognize its importance and will know how to do the research and evaluation necessary to get the correct answer.

SOME OF THE LEGAL PROBLEMS INVOLVED IN THE CASE

Attack on Letters of Adm., Power of Attorney Judgment	Action vs. Transportation Co. on merits	Proceedings vs. Lawyers for unethical conduct	Suit for damage against Undertaker, Lawyers
1. No renunciation by widow.	1. Tort Problem.	1. What is the unethical conduct.	1. Tort; conspiracy to defraud; how much conspiracy; how much of the fraudulent plan do you have to prove; evidence:
2. Not cited to appear and show cause.	2. Death claim.	2. Conspiracy, acting without authority in compromising case.	1. Obtaining letter of administrator.
3. Mental condition.	3. Statute of Limitations 1 year (we are still within the year).	3. Fee charged.	2. Obtaining power of attorney.
4. Fraud or conspiracy.	4. Agency truck driver, scope of employment.	4. Failure of attorney to reveal all to court;	3. Suppressing evidence of truck driver.
5. James as Administrator. James as her attorney in fact.	5. Negligence.	5. Failure to contact client before acting.	4. Not presenting whole case to court.
6. What is procedure for raising this point.	6. Contributory negligence.	6. Suppressed evidence re; truck driver.	5. Conflicting interests. Who are to be defendants.
7. Her action for wrongful injuries; the power of attorney wrongfully obtained; no right to settle the case, or was there?	7. Evidence to support the claim.	7. Conflicting interests; Bar Association.	
	8. Who are witnesses.		
	9. Criminal action vs. Truck driver.		

Since only an hour is allowed for the whole examination, we cannot expect as exhaustive an analysis of the problem as is given at the conclusion of Chapter II. But the process is the same.

PART III

The third part of the exercise is devoted to encouraging the student to outline what he considers a suitable plan of campaign. If he has done his thinking adequately with respect to Part II, he will find four different possible steps that may be taken. His final problem

is to evaluate these steps in the light of the extent to which they may help the client to get what he is legally and ethically entitled to. In this phase of the work the student should review all the facts and questions of law and decide how far he can get along each of the four roads. If one of the steps should be taken before another, he should recognize why. The exercise is a trying one, both for instructor and student, but the staff members feel that through it they obtain a satisfactory idea of the extent to which the student has been able to profit by the exercise given during the year.

GRADING

Legal Aid Clinic work has so much in common with actual law practice that it has been gradually becoming clear to the members of the staff that their grading system ought to approach the effectiveness of the student from a very practical angle. The object here is to see how well he can accomplish results for a client.

There are two steps in any grading system: first, to establish a measuring rod; and second, to apply it to the particular student.

In determining, during the years, the particular measuring rod the staff wrote to lawyers and to former students asking them to suggest characteristics of a good lawyer. We wanted to know by what criteria to distinguish a good lawyer from a poor lawyer. The replies were varied, but the final decision of the staff was not entirely arbitrary. We realized that with certain students even special training would not produce ability of such a sort that we would be justified in allowing the individual to go forth into the world with our approval. As to the rest, we believed that we could render some help and certify to their having attained a degree of professional maturity; that they could handle themselves with a reasonable amount of self-confidence and turn out work for their clients of reasonable quality. While, in accordance with our law school practice, the final grades were given in numerical form, we wanted the interested observer to be able to break those grades down not into individual numerical grades for specific courses; but into professional characteristics. No doubt the specific characteristics are debatable. Some may have been overlooked. Others may be included which later on we may feel have no place. But we think it sound that grading in the Legal Aid Clinic course should rest on characteristics definitely agreed upon in advance and known to the students from the beginning.

Each staff member grades each student upon each exercise in which he observes the student at work. Thus during the year a con-

tinuous flow of many grades for each student is maintained. It is possible to ascertain, in a more or less satisfactory fashion, the student's position in the class at any given time; and the progress that he is making with respect to his own past record as he gets a better grasp of the mental processes involved in the various exercises. We observe also that one student may be effective in one phase of law practice and weak in another. He may write an excellent brief but may be very inadequate in preparing a case for trial. He may write a good letter but make a poor argument. He may interview a client effectively but be unable to adjust himself to office routine. This provides us with some basis for discussing with each student, against a background of the average work of the class, the points at which he should make efforts to improve his effectiveness.

We decided that the general objective of an evaluation of each student should be whether we thought he was a well-rounded practitioner able, in due course, to assume the professional responsibilities incident to heading his own office. This opinion involved an appraisal of his present progress and an estimate of what we thought he might develop into. To aid us in these tasks we made two assumptions.

The first assumption was that we were members of a large law firm which employs each year a number of promising law school graduates. Those who make good are given permanent positions depending upon their particular abilities. Those who do not make good are released. We asked ourselves concerning each man whether we, personally, would want him in our firm. Admitting the subjective character of this test, we endeavored to offset personal bias by having all the members of the staff combine. Each final grade is a composite of staff opinions.

The second assumption was that we were clients who had taken one piece of work to a lawyer and were asking ourselves whether on the basis of the way he handled it we should want to go back to him. We thought this fair, because it was precisely the type of lifelong examination to which each lawyer is subjected at the hands of a highly critical public. We also favored it because we did not want the students to fall into the rut of thinking of themselves as nothing better than law clerks in a large law office or business establishment. If our purpose is to train leaders of the bar, we should endeavor to have our students look beyond the clerical stage to the point where they, as well-rounded individuals, should take their position among the better and more capable practitioners. We felt that if we geared our

system to producing lawyers of this broader character, we should be contributing to the solution to the question—how shall we train lawyers to practice law in the "grand manner"?

We decided, then, to grade the student on his office work by cases, on his monthly and semester improvement, and on his classroom and laboratory participation. To simplify the matter, we arbitrarily assigned certain characteristics to each of these topics, and now we measure each student against this background.

A perfect piece of work is worth 10. If the student does what the staff members in charge regard as an average piece of work, considering the class as a whole, the student receives a 5. Better than average and less than average work is indicated accordingly. It is not a question of whether a man fails, but of whether he appears to be keeping up with the class in a process of individual and collective development. All of these grades are used to determine position in the class.

The following Grade Sheet gives in detail the characteristics now used as the Legal Aid Clinic measuring rod. At the beginning of each year a sheet is made out for each student. During the year from time to time it is filled in, and it is used in the final staff conference when the ultimate grade is made up for the Duke Law School records.

GRADE SHEET

STUDENT: .....

GRADES ON CASES

1. Adaptability
2. Dependability
3. Attention to detail
4. Ability to organize material

Case No.	*Staff Member*	1	2	3	4

MONTHLY GRADES

1. Ability to work with people in office
2. Ability to deal with other people
3. Ability to profit by criticism

Staff Member	*October*			*November*			*December*			*January*		
	1	2	3	1	2	3	1	2	3	1	2	3

Staff Member	*February*			*March*			*April*		
	1	2	3	1	2	3	1	2	3

GRADE SHEET

STUDENT: .....

SEMESTER GRADES

1. Ability to plan a legal campaign
2. Legal judgment
3. Sensitiveness to ethical considerations
4. Ability to meet the unexpected
5. Creative ability

Staff Member	*First Semester*					*Second Semester*				
	1	2	3	4	5	1	2	3	4	5

MISCELLANEOUS

Staff Member	*Work on which grade is given*	*Grade*

It has been interesting to members of the Legal Aid Clinic staff to watch the gradual development of this system and to see the uses made of it. Increasingly, prospective employers of young lawyers find in the collected material a critical evaluation of the individual student which is not so readily obtained from an inspection of the numerical grades gathered in other law school courses. Our grades, when broken down, show individual progress, reaction of various staff members to the same student, reaction of the student to various kinds of work. They are not a cross section of the student's ability on the day when he took his final examination in the course.

The record is particularly useful to members of the Legal Aid Clinic staff in helping the student to broaden and increase his abilities. The staff believes that it should not approve a man who does not seem to be able to hold his own at the bar, but it also feels a personal interest in helping each student to develop his abilities to the utmost. Like everything else in the course, the grading system is subject to change for the better without notice.

CHAPTER VI

CONCLUSION

IN this final chapter an effort is made, briefly, to evaluate the work and to consider the direction in which our pioneering during the next ten years may develop.

Evaluation

The staff of the Legal Aid Clinic recognize that it is difficult for them to achieve an impersonal, detached viewpoint in considering the merits or demerits of the Legal Aid Clinic method of instruction. At the same time it seems to them useful to set down their own reactions.

The Legal Aid Clinic idea is no longer an experiment in the field of legal education. The first Legal Aid Clinic of modern type was established about 1914, and since that time the movement has grown slowly but steadily. By 1941 effective agencies of this sort were operating in many of the leading law schools. Students by the hundreds, trained in these clinics, were contributing their skill, wisdom, and idealism at the bars of many of the counties of the United States. The idea has aroused interest in such widely separated places as England, South America, and New Zealand. As a part of this general movement during the past ten years, the Duke Legal Aid Clinic has endeavored to make a contribution in the direction of quality. We are sure that our students in the 1940's are receiving a better training than we were able to give the men of the 1930's. We confidently expect that in the 1950's further progress will be observable.

Our opinion of our past progress is based not alone on our own views, which the reader may regard as at least receptive to favorable impressions. Former students without solicitation have expressed themselves as having found the work beneficial, and other lawyers who have observed the Legal Aid Clinic graduates and their work have added an occasional friendly word. Sometimes lawyers for whom our students write briefs adopt all or a part of the briefs as their own. Some of our graduates have found positions in law offices as a result of their work in the Legal Aid Clinic, but we are most pleased with the young men who have discovered enough self-confidence to open their own offices and courageously meet the shock of independent law practice at the outset of their careers.

Our pleasure at these indications of progress does not blind us to the seriousness of the problems ahead. First among these is the task of laying down a set of minimum standards applicable to Legal Aid Clinic work throughout the country. At present there is no accepted objective, method, or content for such a course in the law school world. The name "Legal Aid Clinic" is applied to a variety of devices and practices. While it is true that conditions in various law schools differ considerably in the several states and sections, and while it is probably true that law school courses in such subjects as contracts and torts show a high degree of individual art, there is particular reason in the Legal Aid Clinic which serves the public as well as the law student to see that the name carries with it some minimum guarantee of quality. The Committee on Legal Aid Clinics of the Association of American Law Schools is, at present, engaged in a study of this problem, and the present volume is one contribution toward a marshaling of material from which a set of minimum standards may ultimately be developed. The National Association of Legal Aid Organizations has already adopted its own standards for the client-serving task of legal aid societies, some of which at least are applicable to the public relations aspect of Legal Aid Clinics. More work needs to be done on this project, and plans are being made to see that it is done.

It is increasingly clear to the members of the Duke Legal Aid Clinic that the teaching process, that is, the transfer of ideas from instructor to student and back again, in this course requires emphasis upon individual, rather than class, instruction. If we are to certify a man as qualified to bear the responsibilities of law practice in a manner appropriate to a leader of the bar, we must know as much of that man as we can. Classroom recitations and an examination paper at the end of the course are not adequate to give us this basic information. In consequence, the relationship of student and teacher has given way in our minds, and we hope in the students' minds, to a senior-junior law partnership concept. If anything, this makes us more critical—not only of the students, but also of ourselves. Working with these young men from day to day, we could not, if we wished, conceal our own inadequacies. We cannot be satisfied with preparing ourselves for a classroom instruction period. When the door opens and a client appears, we go through the same stages of adjustment that we are urging the student to study, and, except for our greater experience in law practice, we find the unexpected just as troublesome as does anyone else. Since we, as lawyers, are obli-

gated to give the client first-class service, we are pressed also, from that angle, not to allow our efforts to flag or relax into spiritless routine.

In the informal, individual conferences with the students we spend much more time than we do in the classroom, but the results appear to us to justify this effort. Not only do we see opportunities to help the student help himself, but by accepting him as having matured professionally, we encourage him to view his client and himself as if he were a practicing lawyer. It is our purpose to increase the student's load of responsibility gradually during the year until he is able to stand alone or at least to know enough about legal situations to recognize when he should ask for help. Thus the student changes his point of view by easy stages, from that of a detached, scholarly, objective observer in the classroom, to that of a harried, but competent and well-rounded, participant in the arena of law practice.

The classroom or laboratory work, as described in this volume, seems now an indispensable part of our instruction. Valuable as is the office work, it does not always present material at the time or in the form necessary to illustrate the stage of the mental process of the practicing lawyer which we happen to be studying. So far we have been unable to think of any better method of providing the class as a whole with a "slow motion" picture of this thinking process than by the exercises described in the earlier chapters. Details of the exercises will stand much improvement, but the general outline of the work seems to us to be sound.

We also believe that the perspective of the course is satisfactory. If our objective is to teach law students to think about their cases in the way which the better lawyers think about them, we avoid the criticisms that we are overlapping and duplicating other law school courses, and that we are teaching the "tricks of the trade." We may come, in time, to a different view of the way in which a competent lawyer thinks, but our present objective has the advantage of drawing together in logical order in the student's mind a multitude of loose ends about the law which he picks up in his other law school work. It is worth much in time and effort to the student to understand how his work in other courses in law school is related to the post-law school period of his life. The Legal Aid Clinic course is a practical method of bridging this gap. The question "What is the law?" is a normal one for a legal scholar. For the practicing lawyer, it is equally natural to inquire, "What next will I do for my client?" The latter question is broader than the former and often includes it. For

these and other reasons, the members of the staff of the Duke Legal Aid Clinic feel that during the past decade they have spent their time and effort to advantage.

PLANNING FOR THE FUTURE

While it is pleasant, complacently to view the ten years of progress, the main value of this book, to the staff of the Clinic, is its position as a point of departure for the activities of the next period. Today a new series of problems challenges us to increased effort, greater imagination, shrewder resourcefulness, and more critical self-examination.

We have often questioned whether, as a matter of curricular planning, it is best to put all the Legal Aid Clinic work in one year. There are times when we are inclined to explore the contrasting values of spending, not more time during the three years, but the same time arranged differently. We have observed that many students are able to receive ideas but need time in which to digest them; thus, a two-hour course during a whole year may prove ultimately more beneficial than a four-hour course for one semester. If, at some future time, a change were possible, we might devote an hour a year to Legal Aid Clinic work during each of the three years.

As soon as a student goes into medical school, a white coat is put on him, and he is called a doctor. Why should not the first-year law student at least be taken on a sight-seeing trip to a law office, courthouse, and other places where a lawyer spends his time? At leisure he might be shown the elementary matters which we now try to crowd into the first two weeks of our course. He might write memoranda of law, engage in some argumentation exercises, and begin to think of himself not only as a law student, but as a prospective practitioner.

During the second year, appropriate material would be the classroom and laboratory exercises described earlier in this book, the writing of trial and appellate briefs and perhaps letters.

In the third year, he would come in contact with actual cases and flesh-and-blood clients.

Another obvious step is to continue to improve the existing techniques. At different points in this volume, it has been remarked that the staff is not completely satisfied with some aspects of its work. The whole process is still an object for critical examination. Each spring when we meet to rewrite the book *Instructions to Students,* a number of improvements and suggestions are available for consideration.

This seems to the staff a healthy situation; and, while we recognize the drudgery involved in this annual rewriting, we feel that the process is a guarantee that the subject is still vital.

With the time available, we are now giving the student about as much as we feel he can absorb in a single year. With more time, further developments are not only possible, but quite readily achieved. These are of two sorts: those of which we have already made some investigation; and those in which we see objectives but, as yet, no completely adequate methods.

We have made some progress with legislative drafting. For some years a Legislative Bureau was conducted at the Duke Law School. A course in Legislation is still given. Neither of these enterprises was part of Legal Aid Clinic work; but a number of requests from our clients, among the social service agencies, have supplied us every legislative year with material on which students, if they have time, may gain experience.

The subject of conciliation, and other related processes, has not yet been thoroughly explored. The value of further work in this field is likely to be very great. Judging from the trend of litigation in the past few years and the development of administrative agencies, one may anticipate that the postwar bar will need to know more about nonlitigation methods of settling clients' cases.

Some such simple device as a graduate seminar in Legal Aid Clinic work would provide the needed elbow room for development of the ideas which are not complete novelties, but which, being in the field of new projects, require further planning. The goals are clear, but the means remain to be worked out.

These objectives lead us into the field of planning for postwar legal education. Whether it is to undergo a basic change or not is a question. There are, however, two points on which there is reason to expect greater emphasis, by a demanding public, than has been noted in the past. These may be described as the lawyer as a social engineer, and the lawyer as a lifelong student. The Legal Aid Clinic work appears to offer a method of approach to each.

The lawyer, who has his community as his client, will find opportunities for leadership, self-expression, and public service beyond those available to the practitioner whose interests are limited to one or more specific private clients or who is merely a clerk. If every lawyer devoted more of his time and skill to helping to solve community problems in his own neighborhood, the public prestige of the profession would increase. Our Legal Aid Clinic work in legis-

lative drafting and our interprofessional conferences touch two aspects of the lawyer as a social engineer, but the field in general still is inadequately understood by the profession. Perhaps a graduate Legal Aid Clinic Seminar in Preventive Law might offer a practical approach. Our time at present is so taken up with the routine of how a lawyer thinks during the process of serving individual clients that we meet the broader community problems only when some social service agency brings them to our attention in our office work.

If we can find a way to attract the attention of the student and crystallize some of the abundant professional idealism characteristic of this phase of his mental development, we shall have made a contribution, not only to legal education, but also to the future welfare of the community. We believe the materials and opportunities are at hand, but we need time for ourselves and for the students to develop them.

The physician as a lifelong student is a familiar concept. Medical clinics, conferences, institutes are constantly being held. Through such media the physician not only keeps abreast of the times in his knowledge, but increases his skill. It is only recently that legal institutes have begun to obtain the recognition to which they are entitled. The lawyer as a lifelong student has not been given much publicity.

Whatever the reasons for limiting the undergraduate law school course to a specific number of years, there seem to be arguments in favor of a graduate law school course. The postwar law school may well contemplate rendering a service to all graduate lawyers, similar to, but more elaborate than, that which some of the more enlightened bar associations are now endeavoring to support. When this time comes, the Legal Aid Clinic has a contribution to make to the particular field. Perhaps we may even take the lead.

One of the few advantages of the present World War to legal education is the opportunity afforded some of us to plan for the future. The Duke Legal Aid Clinic staff is developing a postwar program and finds its implications far-reaching.